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L.N. 351 of 2016

Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2016

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FINANCIAL ADMINISTRATION AND AUDIT ACT (CAP. 174)

Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2016

BY VIRTUE of the powers conferred by article 4 of the Financial Administration and Audit Act, the Minister for Finance has made the following regulations:-

Citation.

1. The title of these regulations is the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2016.

Part I
General Provisions

Interpretation and Scope

Definitions

2. (1) For the purposes of these regulations:

"ancillary purchasing activities" means activities consisting in the provision of support to purchasing activities, in particular in the following forms:

(a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;

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

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

"black listed person" shall have the same meaning as that given in the Public Procurement Regulations, 2016;

"bodies governed by public law" means bodies that have all of the following characteristics:

(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) they have legal personality; and

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(c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

"candidate" means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;

"central purchasing body" means a contracting entity providing centralised purchasing activities and, possibly, ancillary purchasing activities:

Provided that procurement carried out by a central purchasing body in order to perform centralised purchasing activities shall be deemed to be procurement for the pursuit of an activity as described in regulations 7 to 13. Regulation 15 shall not apply to procurement carried out by a central purchasing body in order to perform centralised purchasing activities;

"centralised purchasing activities" means activities conducted on a permanent basis, in one of the following forms:

(a) the acquisition of supplies and/or services intended for contracting authorities;

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

"Commission" means the Commission of the European Union;

"common technical specification" means a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) 1025/2012;

"conflicts of interest" shall at least mean any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be

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perceived to compromise their impartiality and independence in the context of the procurement procedure;

"Conformity Assessment Body" shall be a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products;

"contract award notice" means a notice to be published in the Official Journal of the European Union;

"contract notice" means a notice to be published in the Official Journal of the European Union;

"contracting authorities" means State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;

"Contracts Committees" means the General Contracts Committee and, or the Special Contracts Committee;

"CPV" means the Common Procurement Vocabulary as adopted by Regulation (EC) No. 2195/2002, as amended from time to time;

"departmental tender" means tenders issued by contracting authorities with an estimated value which falls under the threshold established under regulation 30(1)(a);

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

"direct contracts" means contracts awarded without recourse to a prior call for competition;

"Director" means the Director of Contracts who heads the Department of Contracts;

"economic operator" means any natural or legal person or public entity or group of such persons and, or entities, including any temporary association of undertakings;

"electronic means" means electronic equipment for the

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

"European technical assessment" means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council;

"Evaluation Committee" means boards or committees appointed by contracting authorities with the purpose of evaluating tenders received and for making recommendations thereon;

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

"government's e-procurement platform" means the electronic platform for procurement as established by the Director;

"ineffectiveness" shall have the same meaning as that given under the Public Procurement Regulations, 2016;

"innovation" means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations *inter alia* with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;

"irregular tenders" means tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting entity to be abnormally low;

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

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

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

"local authorities" includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003;

"Member State" means a member state of the European Union;

"Minister" means the Minister responsible for Finance;

"modification" means any change, variation or amendment to the original terms of the contract including, but not limited to, the introduction of new conditions and to the removal or replacement of existing conditions;

"non-compliant tender" means a tender which does not conform to the terms and conditions specified in the notice or EU notice to tender or in the procurement documents themselves;

"notice" means a notice published in the Gazette;

"prior information notices" means a notice published in the Official Journal;

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

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

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

"Public Contracts Review Board" means the Public Contracts

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Review Board as established under the Public Procurement Regulations, 2016;

"regional authorities" includes authorities listed non-exhaustively in NUTS 1 and 2, as referred to in Regulation (EC) No 1059/2003 of the European Parliament and of the Council;

"Review Board" shall have the same meaning as in the Public Procurement Regulations, 2016;

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

"SME" shall be understood as defined in Commission Recommendations 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

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

(a) "international standard" means a standard adopted by an international standardisation organisation and made available to the general public;

(b) "European standard" means a standard adopted by a European standardisation organisation and made available to the general public;

(c) "national standard" means a standard adopted by a national standardisation organisation and made available to the general public;

"supply, works and service contracts" are contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in regulation 2(2), and one or more contractors, suppliers, or service providers;

"supply contracts" means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;

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

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"technical specification" means either -

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

(b) in the case of supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

"TFEU" means the Treaty on European Union and the Treaty on the Functioning of the European Union;

"tenderer" means an economic operator that has submitted a tender;

"unacceptable tenders" means tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority’s budget as determined and documented prior to the launching of the procurement procedure;

Cap. 406. "VAT" means value added tax under the Value Added Tax Act;

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"a work" means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

"works contracts" means public contracts having as their object one of the following:

(a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Schedule 1;

(b) the execution, or both the design and execution, of a work;

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

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

(2) "Contracting entities" are entities which:

(a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 8 to 14;

(b) when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in regulations 7 to 13, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority.

(3) (a) "Public undertaking" means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

(b) A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities directly or indirectly -

(i) hold the majority of the undertaking’s subscribed capital;

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(ii) control the majority of the votes attaching to shares issued by the undertaking;

(iii) can appoint more than half of the undertaking's administrative, management or supervisory body.

(4) For the purpose of sub-regulations (2) and (3):

(a) special or exclusive rights means rights granted by a competent authority by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in regulations 7 to 13 to one or more entities, and which substantially affects the ability of other entities to carry out such activity;

(b) rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of paragraph (a). Such procedures include:

(i) procedures with a prior call for competition in conformity with the Public Procurement Regulations, 2016, the Concession Contracts Regulations, 2016, these regulations or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations;

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(ii) procedures pursuant to other legal acts of the Union listed in Schedule 2, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

Scope.

3. The scope of these regulations is that of regulating the procurement by contracting entities operating in the water, energy, transport and postal services sectors.

Applicability

Applicability.

4. (1) These regulations shall regulate all the procurement procedures that are initiated after their entry into force.

(2) The application of these regulations is subject to Article 346 of the TFEU.

Transitory provision.

5. Any procurement procedure which has been issued prior to the coming into force of these regulations shall continue to be regulated by the laws which were in force before the coming into

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force of these regulations, including any review on any decision thereon.

Common provisions.

6. For the purposes of regulations 7, 8 and 9 "supply" shall include generation or production, wholesale and retail sale, while production of gas in the form of extraction falls within the scope of regulation 13.

Gas and Heat.

7. (1) As far as gas and heat are concerned, these regulations shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;

(b) the supply of gas or heat to such networks.

(2) The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of sub-regulation (1) where:

(a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in sub-regulation (1) of this regulation or in regulations 8 to 10;

(b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than twenty per cent of the entity's turnover having regard to the average for the preceding three years, including the current year.

Electricity.

8. (1) As far as electricity is concerned, these regulations shall apply to the following activities:

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

(b) the supply of electricity to such networks.

(2) The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of sub-regulation (1) where all of the following conditions are met:

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(a) the production of electricity by the contracting entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in sub-regulation (1), or in regulations 7, 9 and 10;

(b) supply to the public network depends only on the contracting entity's own consumption and has not exceeded thirty per cent of the contracting entity's total production of energy, on the basis of the average for the preceding three years, including the current year.

Water.

9. (1) As far as water is concerned, these regulations shall apply to the following activities:

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

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

(2) These regulations shall also apply to contracts or design contests awarded or organised by contracting entities which pursue an activity referred to in sub-regulation (1) and which:

(a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than twenty per cent of the total volume of water made available by such projects or irrigation or drainage installations;

(b) are connected with the disposal or treatment of sewage.

(3) The supply by a contracting entity other than a contracting authority, of drinking water to fixed networks which provide a service to the public shall not be considered as a relevant activity within the meaning of sub-regulation (1) where:

(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in regulations 7 to 10;

(b) supply to the public network depends only on the contracting entity's own consumption and has not exceeded thirty per cent of the contracting entity's total production of drinking water, on the basis of the average for the preceding three years, including the current year.

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Transport services.

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

(2) As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

Ports and airports.

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

Postal services.

12. (1) These regulations shall apply to activities relating to the provision of:

(a) postal services;

(b) other services, other than postal services, on condition that such services are provided by an entity which also provides postal services within the meaning of sub-regulation (2)(b) and provided that the conditions set out in regulation 24(1) and (2) are not satisfied in respect of the services falling within sub-regulation (2)(b).

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

(a) "postal item" means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) "postal services" means services consisting of the clearance, sorting, routing and delivery of postal items. This shall include both services falling within as well as services falling outside the scope of the universal service set up in conformity with Directive 97/67/EC;

(c) "other services, other than postal services" means services provided in the following areas:

(i) mail service management services (services

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both preceding and subsequent to despatch, such as mailroom management services);

(ii) services concerning postal items not included in sub-regulation (2)(a), such as direct mail bearing no address.

Extraction of oil and gas exploration or extraction of coal or other solid fuels.

13. (1) These regulations apply to activities relating to the exploitation of a geographical area for the purpose of:

(a) extracting oil or gas;

(b) exploring for, or extracting, coal or other solid fuels.

(2) These regulations do not apply to activities relating to the exploration for oil and gas.

(3) For the purpose of this regulation:

(a) "exploration" should be considered to include the activities that are undertaken in order to verify whether oil and gas is present in a given zone and if so whether it is commercially exploitable;

(b) "extraction" should be considered as the "production" of oil and gas;

(c) "production" should be considered to include the setting up of adequate infrastructure for future production of oil such as oil platforms, pipelines, and terminals.

Tenders comprising products originating in third countries.

14. (1) This regulation shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries.

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

(3) Software used in telecommunications network equipment shall be regarded as products.

(4) Subject to the provisions of sub-regulation (2), where two

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or more tenders are equivalent in the light of the contract award criteria defined in regulation 170, preference shall be given to those tenders which may not be rejected pursuant to sub-regulation (2). The prices of those tenders shall be considered equivalent for the purposes of this regulation if the price difference does not exceed three per cent.

(5) A tender shall not be preferred to another pursuant to the sub-regulation (1) where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance or disproportionate costs.

(6) For the purposes of this regulation, third countries to which the benefit of these regulations has been extended by a Council Decision in accordance with sub-regulation (1) shall not be taken into account for determining the proportion, referred to in sub-regulation (2), of products originating in third countries.

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

15. (1) These regulations shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

(2) The contracting entities shall notify the Commission if so requested of all the categories of products or activities which they regard as excluded under sub-regulation (1).

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

16. (1) These regulations shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in regulations 7 to 13 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Union nor to design contests organised for such purposes.

(2) The contracting entities shall notify the Commission if so requested of all the categories of products or activities which they regard as excluded under sub-regulation (1).

Contracts awarded and design contests organised pursuant to international rules.

17. (1) These regulations shall not apply to contracts or design contests which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those laid down in these regulations established by any of the following

(a) a legal instrument creating international law

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obligations, such as an international agreement, concluded in accordance with the Treaties, between a Member State and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;

(b) an international organisation;

(c) contracts and design contests which the contracting entity awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by that organisation or institution; in the case of contracts or design contests co-financed the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures:

Provided that for design contests, falling under this regulation, and having an estimated value which meets or exceeds the thresholds established under Schedule 5, the contracting entity shall communicate all legal instruments referred to in paragraph (a) to the Commission.

(2) The provisions of regulation 23 shall apply to contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules. Sub-regulation (1) shall not apply to those contracts and design contests.

Specific exclusions for service contracts.

18. (1) These regulations shall not apply to:

(a) acquisition or rental, by whatever financial means, or land, existing buildings or other immovable property or concerning rights thereon;

(b) arbitration and conciliation services;

(c) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services in:

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

(ii) judicial proceedings before the courts, tribunals or public authorities of a Member State or a third

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country or before international courts, tribunals or institutions;

(d) legal advice given in preparation of any of the proceedings referred to in paragraph (c) or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services;

(e) document certification and authentication services which must be provided by notaries;

(f) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;

(g) other legal services which are connected, even occasionally, with the exercise of official authority;

(h) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

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

(j) employment contracts;

(k) public passenger transport services by rail or metro;

(l) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;

(m) contracts for broadcasting time or programme

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provision that are awarded to audiovisual or radio media service providers;

(n) public service contracts for research and development services other than those public service contracts for research and development services which fall under the CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 and whose benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

(o) when it is approved by the Commission in line with Article 35 of Directive 2014/25/EU.

(2) For the purposes of this regulation:

"media service providers", limitedly for the purpose of sub-regulation (1)(m) shall have the same meaning as pursuant to point (d) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

"programme" shall have the same meaning as pursuant to point (b) of Article 1(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services and shall also include radio programmes and radio programme materials;

"programme material" shall have the same meaning of the term "programme".

Service contracts awarded on the basis of an exclusive right.

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

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

20. These regulations shall not apply to:

(a) contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in regulation 9(1);

(b) contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in regulation 7(1), regulation 8(1) or regulation 13 for the supply -

(i) of energy;

(ii) of fuels for the production of energy.

Defence and security. S.L. 174.08

21. (1) These regulations shall not apply to contracts falling within the scope of Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations as well as to contracts to which the said regulations do not apply pursuant to regulations 9, 13 and 14 thereof.

(2) Contracts and design contests not otherwise exempted under sub-regulation (1) to the extent that the protection of the essential security interests of Malta cannot be guaranteed by less intrusive measures, for instance by imposing requirements aimed at protecting the confidential nature of information which the contracting entity makes available in a contract award procedure as provided for in these regulations.

(3) These regulations shall also not apply to contracts and design contests not otherwise exempted under sub-regulation (1) to the extent that the application of these regulations would oblige Malta to disclose and supply information which it considers contrary to the essential interests of its security.

Contracts declared to be secret.

22. These regulations shall not apply to contracts or design contests which are declared to be secret or must be accompanied by special security measures in accordance with the laws of Malta provided that it has been determined that the essential interests concerned cannot be guaranteed by less intrusive measures such as those described in regulation 21(2).

Contracts and design contests involving defence or security aspects awarded or organised pursuant to international rules.

23. (1) These regulations shall not apply to contracts or design contests involving defence or security aspects which the contracting entity is obliged to award or organise in accordance with procurement procedures different from those laid down in these regulations established by any of the following:

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(a) an international agreement or arrangement, concluded in accordance with the Treaties, between Malta and one or more third countries or subdivisions thereof and covering works, supplies or services intended for the joint implementation or exploitation of a project by their signatories;

(b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of Malta or a third country;

(c) an international organisation.

(2) All agreements or arrangements referred to in sub-regulation (1)(a) shall be communicated to the Commission.

(3) These regulations shall not apply to contracts and design contests involving defence or security aspects which the contracting entity awards in accordance with procurement rules provided by an international organisation or international financing institution, where the contracts or design contests concerned are fully financed by this organisation or institution. In the case of contracts or design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

Activities directly exposed to competition.

24. (1) Contracts intended to enable an activity mentioned in regulations 7 to 13 to be carried out shall not be subject to these regulations if the contracting entities, having introduced the request pursuant to regulation 25, can demonstrate that, in Malta, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to these regulations.

(2) The activity concerned may form part of a larger sector or be exercised only in certain parts of Malta. The competition assessment referred to in sub-regulation (1) is without prejudice to the application of competition law. Such assessment shall be made having regard to the market for the activities in question and the geographical reference market within the meaning of sub-regulations (3) and (4).

(3) For the purposes of sub-regulations (1) and (2), the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the TFEU provisions on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or

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services considered to be substitutable on the supply side or demand side, the prices and the actual or potential presence of more than one supplier of the goods or services in question.

(4) The geographical reference market, on the basis of which exposure to competition is assessed, shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. That assessment shall take account in particular of the nature and characteristics of the products or services concerned of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings; market shares between the area concerned and neighbouring areas or of substantial price differences.

(5) For the purposes of sub-regulations (1) and (2), access to a market shall be deemed not to be restricted if Malta has implemented and applied the provisions of Community legislation mentioned in Schedule 3.

(6) If free access to a given market cannot be presumed on the basis of the provisions of sub-regulation (5). it must be demonstrated that access to the market in question is free *de facto* and *de jure*.

Procedure for establishing whether regulation 24 is applicable.

25. (1) Where a contracting entity considers that, on the basis of the criteria set out in regulation 24(3), (4), (5) and (6), a given activity is directly exposed to competition on markets to which access is not restricted, it may submit a request to the Commission to establish that these regulations do not apply to the award of contracts or the organisation of design contests for the pursuit of that activity, where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.

(2) The requests in sub-regulation (1) may concern activities which are part of a larger sector or which are exercised only in certain parts of Malta.

(3) In the request, the contracting entity concerned shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in regulation 24(1) and (2).

(4) Unless a request coming from a contracting entity is accompanied by a reasoned and substantiated position, adopted by an

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independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of regulation 24(1) and (2) to the activity concerned in accordance with regulation 24(3), (4), (5) and (6), the Commission shall immediately inform the Member State concerned. The Member State through the contracting entity shall in such cases inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in regulation 24(1) and (2).

(5) Upon a request submitted in accordance with sub-regulations (1) and (2), the Commission may, by means of implementing acts adopted within the periods set out in Schedule 6, establish whether an activity referred to in regulations 7 to 13 is directly exposed to competition on the basis of the criteria set out in regulation 24.

(6) Contracts intended to enable the activity concerned to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to these regulations in any of the following cases:

(a) the Commission has adopted the implementing act establishing the applicability of regulation 24(1) and (2) within the period provided for in Schedule 6;

(b) the Commission has not adopted the implementing act within the period provided for in Schedule 6.

Modification of request.

26. After the submission of a request, the Member State or the contracting entity concerned may, with the Commission's agreement, substantially modify its request, in particular as regards the activities or the geographical areas concerned. In that case, a new period for the adoption of the implementing act shall apply, which shall be calculated in accordance with paragraph 1 of Schedule 9, unless a shorter period is agreed on by the Commission and the contracting entity which has presented the request.

Further requests before the expiry of the period opened for the first request.

27. When an activity is already the subject of a procedure under this title, further requests concerning the same activity before the expiry of the period opened in respect of the first request shall not be considered as a new procedure and shall be treated in the context of the first request.

Implementing acts.

28. The Commission shall adopt an implementing act establishing detailed rules. That implementing act shall include rules relating to:

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(a) the publication in the Official Journal of the European Union, for information of the date on which the period set out in paragraph 1 of Schedule 6 begins and ends, including any prolongations or suspensions of those periods, as provided for in the same schedule;

(b) publication of the possible applicability of regulation 24(1) and (2);

(c) implementing provisions concerning the form, content and other details of requests pursuant to regulation 25(1), (2) and (3).

Contracts between contracting authorities.

29. (1) Subject to the provisions of Part III, a public contract, having an estimated value which falls under regulation 30(1)(b), awarded by a contracting authority to a legal person governed by private or public law, shall fall outside the scope of these regulations when all of the following conditions are fulfilled:

(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;

(b) more than eighty per cent of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority;

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

(2) A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of sub-regulation (1)(a) where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority.

(3) The provisions of sub-regulations (1) and (2) also apply where a controlled person which is a contracting authority awards a contract to its controlling contracting authority, or to another legal person controlled by the same contracting authority, provided that there is no direct private capital participation in the legal person being

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awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

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

(a) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;

(b) more than eighty per cent of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities; and

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

(5) For the purposes of sub-regulation (4)(a), contracting authorities shall be deemed to exercise joint control over a legal person where all of the following conditions are fulfilled:

(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities. Individual representatives may represent several or all of the participating contracting authorities;

(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;

(c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(6) A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of these

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regulations, where all of the following conditions are met:

(a) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of that cooperation is governed solely by considerations relating to the public interest;

(c) the participating contracting authorities perform on the open market less than twenty per cent of the activities concerned by the cooperation.

(7) For the determination of the percentage of activities referred to in sub-regulation (1)(b), sub-regulation 4(b), and sub-regulation (6)(c), the average total turnover, or an appropriate alternative activity based measure such as costs incurred by the relevant legal person with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration.

(8) Where, because of the date on which the relevant legal person was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

Administration of the process.

30. (1) Without prejudice to the applicability of the other provisions of these regulations, the procurement process of public contracts -

(a) the estimated value of which is less than four hundred and eighteen thousand euro (€418,000), shall be issued, administered and determined by the contracting authorities without the involvement of the Director;

(b) the estimated value of which equals or exceeds the threshold of that four hundred and eighteen thousand euro (€418,000) shall be issued, administered and determined by the Director on behalf of the contracting authority.

(2) The Minister shall, from time to time, by regulations determine the thresholds applicable under these regulations. Such thresholds shall be equal to, and categorised in the same fashion, as the thresholds established pursuant to the relevant European Union

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Directives as published from time to time in the Official Journal of the European Union.

Affiliated Undertakings

Contracts awarded to affiliated undertaking.

31. (1) Notwithstanding the provisions of regulation 29, and provided that the conditions in sub-regulation (2) of this regulation are met, these regulations shall not apply to contracts awarded:

(a) by a contracting entity to an affiliated undertaking;

(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in regulations 7 to 13, to an undertaking which is affiliated with one of those contracting entities.

(2) The provisions of sub-regulation (1) shall apply to:

(a) service contracts provided that at least eighty per cent of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting entity or other undertakings with which it is affiliated;

(b) supply contracts provided that at least eighty per cent of the average total turnover of the affiliated undertaking, taking into account all supplies provided by that undertaking, over the preceding three years derives from the provision of supplies to the contracting entity or other undertakings with which it is affiliated;

(c) to works contracts provided that at least eighty per cent of the average total turnover of the affiliated undertaking, taking into account all works provided by that undertaking, over the preceding three years derives from the provision of works to the contracting entity or other undertakings with which it is affiliated.

(3) Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in sub-regulation (2)(a), (b) or (c) of credible, in particular by means of business, projections.

(4) Where more than one undertaking affiliated with the contracting entity with which they form an economic group provides

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the same or similar services, supplies or works, the percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(5) For the purposes of this regulation, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Directive 2013/34/EU.

(6) In the case of entities, which are not subject to Directive 2013/34/EU, "affiliated undertaking" shall mean any undertaking that:

(a) may be, directly or indirectly, subject to a dominant influence by the contracting entity;

(b) may exercise a dominant influence over the contracting entity;

(c) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

(7) For the purposes of sub-regulation (6), the term "dominant influence" shall have the same meaning as in regulation 2(3).

Joint ventures.

32. Notwithstanding the provisions of regulation 29, and provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part thereof for at least the same period, these regulations shall not apply to contracts awarded by any of the following:

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of regulations 7 to 13, to one of those contracting entities;

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

The Office of the Director of Contracts

Applicability of the Public Procurement Regulations.

33. The provisions of regulations 10, 11, 12, 14 and 15 of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to these regulations.

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34. In relation to a procurement procedure carried out by the Director on behalf of a contracting authority with an estimated value which falls under regulation 30(1)(b) it shall also be the function of the Director:

(a) to establish and approve the general conditions of the procurement documents;

(b) to authorise deviations from standard terms and conditions in accordance with the regulations set out herein and which may be included in the procurement documents;

(c) to consider an extension or the cancellation of a procurement procedure;

(d) to order that a procurement period of any call for offers referred to in these regulations be extended if he considers such an extension justified by the circumstances of the case;

(e) to vet and approve, with or without modification, procurement documents before the same are issued and published;

(f) to approve, where required under these regulations, modifications which exceed the amount established in regulation 177(3);

(g) to approve requests made by the contracting authorities for the extension of contracts if he considers that circumstances so warrant in the public interest and specific provision for such extensions is made in the procurement document;

(h) to identify and implement appropriate means to enable him to monitor the proper execution of contracts;

(i) to make regulations to award contracts in the name and on behalf of contracting authorities and contracting entities covered by these regulations, including the case of an association of authorities of which such contracting authority is a member;

(j) to establish the procedure affecting the award of contracts governed by procedures deviating from these regulations as long as these procedures shall be published by a notice in the Gazette;

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(k) to publish in the Gazette a notice of all awards of contracts including variations outside the limit of the tender conditions, within six months of their award;

(l) to award tenders and sign contracts in the name and on behalf of contracting authorities as established under these regulations;

(m) to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 14; and

(n) to make and transmit to the Minister a report by not later than six months after the end of each financial year about -

(i) the performance of the General Contracts Committee, and of the Special Contracts Committee during the financial year being reported upon. The report shall, in particular, provide details regarding appeals submitted by candidates and tenderers and any person having or having had an interest in obtaining a particular public contract in terms of these regulations and the decisions arrived at by the General Contracts Committee; and

(ii) the results of the monitoring activities:

Provided that following the transmission of the report to the Minister, the Director shall ensure that the report is made public;

(o) to inform the Commission of:

(i) any general difficulties, in law or in fact, encountered and reported by undertakings in securing the award of service contracts in third countries;

(ii) any difficulties, in law or in fact, encountered and reported by undertakings and which are due to the non-observance of the international labour law provisions listed in Schedule 14 when those undertakings have tried to secure the award of contracts in third countries:

Provided that the provisions of sub-paragraphs (i) and (ii) shall be without prejudice to the commitments of the

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Union in relation to third countries ensuing from international agreements on public procurement particularly within the framework of the WTO.

The Contracting Authority

Duties of a contracting authority.

35. It shall be the duty of all contracting authorities:

(a) to observe and abide by these regulations;

(b) to administer their own procurement when the estimated values of such a procurement falls under the threshold established in regulation 30(1)(a);

(c) to draw up procurement documents and all relevant supporting documentation:

Provided that when a contracting authority needs to publish a procurement process with an estimated value which falls under the threshold established under regulation 30(1)(b), the same contracting authority shall forward the procurement document and all relevant supporting documentation to the Director so that they may be vetted, published and administered by the latter;

(d) to ensure that any references to nomenclatures in the context of public procurement shall be made using the Common Procurement Vocabulary;

(e) to publish all calls for tenders and quotations, through Government's e-procurement platform, unless otherwise authorised in writing by the Director;

(f) to monitor the implementation of the procurement process;

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

(h) to indicate in its procurement documents that the award of the contract is subject to the review procedure as set forth in these regulations and to include an extract of the relevant part of the appeals process in the said documents for the guidance of economic operators;

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(i) to administer and implement all contracts signed by them or on their behalf and to defend in front of any court or tribunal any issue that might arise in the execution of the contract;

(j) to effect all payments resulting from the execution of the contract;

(k) to take appropriate measures to ensure that, during the execution of a contract, economic operators comply with the applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 14;

(l) to notify the Commission, if so requested by the latter, the following information regarding the application of regulation 31(1) and (6) and regulation 32:

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

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

(iii) proof deemed necessary by the Commission that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of regulation 31 or 32.

Appointment of an Evaluation Committee.

36. (1) When an Evaluation Committee is appointed by a contracting authority or a contracting entity governed by these regulations, the Evaluation Committee shall draw up an evaluation report and communicate the report as follows:

(a) if the estimated value of the tender falls under the threshold established under regulation 30(1)(a), the individual report shall be addressed to the Departmental Contracts Committee and shall be drawn in terms of the provisions of Part III;

(b) if the estimated value of the tender falls under the threshold established under regulation 30(1)(b), the individual report shall be addressed to the Director and shall be drawn in terms of regulation 172.

Penalties.

37. For tenders with an estimated value which falls under the

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threshold established in regulation 30(1)(b), a contracting authority can impose or remit penalties only after obtaining the permission of the Director.

Centralised purchasing activities and joint procurement

Centralised purchasing bodies.

38. (1) Contracting authorities listed in Schedule 4 are authorised to act also as a central purchasing body.

(2) It shall be the function of central purchasing bodies to periodically notify Heads of Departments of the prices and conditions applicable for, and the procedure to be followed in, the procurement of such equipment, stores, works or services.

Centralised purchasing activities and central purchasing bodies.

39. (1) A contracting entity can acquire supplies and, or services from a central purchasing body intended for contracting entities,

(2) Contracting entities can acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body, or by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in paragraph (b) of the definition "centralised purchasing activities" under regulation 2. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting entities, this shall be mentioned in the call for competition setting up that dynamic purchasing system.

Obligations.

40. (1) When a contracting entity carries out its procurement under regulation 39, it shall be deemed to have fulfilled its obligations under these regulations.

(2) A contracting entity also fulfils its obligations pursuant to these regulations where it acquires works, supplies or services:

(a) by using contracts awarded by the central purchasing body;

(b) by using dynamic purchasing systems operated by the central purchasing body; or

(c) by using a framework agreement concluded by the central purchasing body offering centralised purchasing activity referred to paragraph (b) of the definition "centralised purchasing activities" under regulation 2.

(3) Notwithstanding the provisions of sub-regulation (2), the

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contracting entity concerned shall be responsible for fulfilling the obligations pursuant to these regulations in respect of the parts it conducts itself, such as:

(a) awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body;

(b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body.

(4) All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in regulation 70.

(5) Contracting entities may, without applying the procedures provided for in these regulations, award a public service contract for the provision of centralised purchasing activities to a central purchasing body.

(6) The public service contracts identified under sub-regulation (5) may also include the provision of ancillary purchasing activities.

Occasional joint procurement.

41. (1) After seeking the approval of the Director and subject to the conditions the latter may impose, two or more contracting entities may agree to perform certain specific procurements jointly.

(2) Where the estimated value of the joint procurement falls under the threshold established under regulation 30(1)(b), and unless the Director agrees otherwise, the procurement procedure shall be administered by the Director.

(3) Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting entities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to these regulations. This applies also in cases where one contracting entity manages the procedure, acting on its own behalf and on the behalf of the other contracting entities concerned.

(4) Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting entities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting entity shall have sole responsibility for fulfilling its obligations pursuant to these

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regulations in respect of the parts it conducts in its own name and on its own behalf.

Procurement involving contracting entities from different Member States.

42. (1) A contracting entity may, with the approval of the Director and subject to the conditions the latter may impose, participate in procurement procedures involving contracting authorities from different Member States.

(2) Where the estimated value of the joint procurement falls under the threshold established under regulation 30(1)(b), the application of this regulation shall be subject to what is established under regulations 25 and 35(n).

(3) A contracting entity may make use of centralised purchasing activities offered by central purchasing bodies located in another Member State:

Provided that contracting entities shall not use the means provided in this regulation for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject.

(4) The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

(5) The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

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

(b) the conduct of a reopening of competition under a framework agreement.

(6) Several contracting entities from different Member States may jointly award a public contract, conclude a framework agreement or operate a dynamic purchasing system:

(7) Unless the necessary elements have been regulated by an international agreement concluded between the Member States concerned, the participating contracting entities shall conclude an agreement that determines:

(a) the responsibilities of the parties and the relevant applicable national provisions;

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(b) the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

(8) A participating contracting entity fulfils its obligations pursuant to these regulations when it purchases works, supplies or services from a contracting entity which is responsible for the procurement procedure.

(9) When determining responsibilities and the applicable national law as referred to in sub-regulation (7)(a), the participating contracting entities may allocate specific responsibilities among them and determine the applicable provisions of their respective national laws.

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

(11) Where several contracting entities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

(a) the national provisions of the Member State where the joint entity has its registered office;

(b) the national provisions of the Member State where the joint entity is carrying out its activities.

(12) The agreement referred to in sub-regulation (11) may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

Mixed Procurement

Mixed procurement covering the same activity.

43. (1) Contracts which have as their subject two or more types of procurement, whether works, services or supplies, all of which are covered by these regulations, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

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(2) in the case of mixed contracts which have as their subject-matter different types of procurement, all of which are covered by these regulations, consisting partly of services within the meaning of regulations 134 to -139 and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

(3) In cases of mixed contracts which have as their subject-matter procurement covered by these regulations and procurement covered by other legal regimes and where the different parts of a given contract are objectively separable the following shall apply:

(a) contracting authorities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting authorities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned;

(b) where contracting authorities choose to award a single contract, these regulations shall, unless otherwise provided in regulation 23, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to;

(c) in the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with these regulations, provided that the estimated value of the part of the contract which constitutes a contract covered by these regulations, calculated in accordance with regulations 42 to 55, is equal to or greater than the relevant threshold set out in Schedule 5.

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

Procurement covering several activities.

44. (1) In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract.

(2) Where contracting entities choose to award separate

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contracts, the decision as to which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(3) The choice between awarding a single contract or awarding a number of separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application of these regulations or where applicable the Public Procurement Regulations, 2016, or the Concession Contracts Regulations, 2016.

(4) A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

(5) In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined as follows:

(a) awarded in accordance with the Public Procurement Regulations, 2016, if one of the activities for which the contract is intended is subject to these regulations and the other to Public Procurement Regulations, 2016;

(b) awarded in accordance with these regulations, if one of the activities for which the contract is intended is subject to these regulations and the other to the Public Procurement Regulations, 2016, for the award of concession contracts;

(c) awarded in accordance with these regulations, if one of the activities for which the contract is intended is subject to these regulations and the other is not subject to either these regulations, the Public Procurement Regulations, 2016, or the Public Concessions Regulations, 2016;

(d) notwithstanding the provisions of regulation 43, where contracting entities choose to award a single contract, the provisions of this sub-regulation shall apply;

(e) where one of the activities concerned is covered by Article 346 of the TFEU or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, regulation 46 shall apply. S.L. 174.08

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Mixed procurement covering the same activity and involving defence or security aspects. S.L. 174.08

45. (1) In the case of mixed contracts covering the same activity which have as their subject-matter procurement covered by these regulations and procurement covered by Article 346 of the TFEU or by the regulations governing Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, this regulation shall apply.

(2) Where the different parts of a given contract are objectively separable, contracting entities may choose to award separate contracts for the separate parts or to award a single contract.

(3) Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(4) Where contracting entities choose to award a single contract, the following criteria shall apply to determine the applicable legal regime:

(a) where part of a given contract is covered by Article 346 of the TFEU, the contract may be awarded without applying these regulations, provided that the award of a single contract is justified for objective reasons;

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(b) where part of a given contract is covered by Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, the contract may be awarded in accordance with those regulations, provided that the award of a single contract is justified for objective reasons:

Provided that the application of this paragraph shall be without prejudice to the thresholds and exclusions for which the regulations identified above provide for.

(5) The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either these regulations or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations.

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(6) The provisions of sub-regulation (4)(a) shall apply to mixed contracts to which both paragraphs (a) and (b) of sub-regulation (4) could otherwise apply.

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(7) Where the different parts of a given contract are objectively not separable, where the contract includes elements to which Article 346 of the TFEU applies, it may be awarded without applying these regulations; otherwise it may be awarded in accordance with the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations. S.L. 174.08

Procurement covering several activities and involving defence or security aspects.

46. (1) In the case of contracts intended to cover several activities, contracting entities may award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(2) Where contracting entities choose to award a single contract, the provisions of sub-regulation (3) shall apply. The choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of these regulations or the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations. S.L. 174.08

(3) In the case of contracts intended to cover an activity which is subject to these regulations and another which is subject to the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations, the contract may be awarded in accordance with the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations: S.L. 174.08

Provided that the provisions of this sub-regulation shall be without prejudice to the thresholds and exclusions for which the Public Procurement of Contracting Authorities or Entities in the fields of Defence and Security Regulations provides. S.L. 174.08

(4) In the case of contracts intended to cover an activity which is subject to these regulations and another which is covered by Article 346 of the TFEU the contract may be awarded without applying these regulations.

(5) Contracts as set out under sub-regulation (3), which in addition include procurement or other elements which are covered by Article 346 of the TFEU, may be awarded without applying these regulations.

(6) The application of sub-regulations (3), (4) and (5) is subject to the condition that the award of a single contract is justified

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for objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these regulations.

Contract Value

Methods for calculating the estimated value of a contract.

47. (1) The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the contracting entity. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

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

(3) Where the contracting entity is comprised of separate operational units, account shall be taken of the total estimated value for all the individual operational units:

Provided that where a separate operational unit is independently responsible for its procurement or certain categories thereof, the values may be estimated at the level of the unit in question.

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

(5) A contract shall not be subdivided with the effect of preventing it from falling within the scope of these regulations, unless justified by objective reasons.

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

Estimated value of framework agreements and dynamic purchasing systems.

48. With regard to framework agreements and dynamic purchasing systems, the estimated value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.

Value of innovation partnerships.

49. In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during

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all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

Value of public works.

50. (1) Contracting entities shall include in the estimated value of a works contract both the cost of the works and the value of any supplies or services necessary for the execution of the works, which they make available to the contractor.

(2) Where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

(3) Where the aggregate value of lots is equal to or exceeds the threshold laid down in Schedule 5, these regulations shall apply to the awarding of each lot.

Similar supplies.

51. (1) Where a proposal for the acquisition of similar supplies may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.

(2) Where the aggregate value of lots is equal to or exceeds the threshold laid down in Schedule 5, these regulations shall apply to the awarding of each lot.

(3) For the purpose of this Part, "similar supplies" means products which are intended for identical or similar uses.

Waiver from application of regulation 50(2) and (3).

52. Notwithstanding the provisions of regulation 50(2) and (3), contracting entities may waive such application in respect of lots the estimated value of which, net of VAT, is less than €80,000 for supplies or services or €1,000,000 for works, provided that the aggregate value of those lots does not exceed twenty per cent of the aggregate value of the lots as a whole.

Renewal of supply or service contracts.

53. The estimated contract value in the renewal of supply or service contracts which are regular in nature or which are intended to be renewed within a given period shall be calculated as follows:

(a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract; or

(b) the total estimated value of the successive contracts

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awarded during the twelve months following the first delivery, or during the financial year where that is longer than twelve months.

Value of leasing products, hire, rental or hire purchase.

54. With regard to supply contracts relating to leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(a) in case of fixed-term contracts, if that term is less than or equal to twelve months, the total estimated value for the term of the contract;

(b) in case of fixed-term contracts, if that term is greater than twelve months, the total value including the estimated residual value;

(c) in the case of contracts without a fixed term or contracts with a term which cannot be defined, the monthly value multiplied by 48.

Calculation of the estimated contract value of the service contracts.

55. (1) With regard to service contracts, the basis for calculating the estimated contract value shall be as follows:

(a) insurance services: the premium payable, and other forms of remuneration;

(b) banking and other financial services: the fees, commissions payable, interest and other forms of remuneration;

(c) design contracts: fees, commissions payable and other forms of remuneration.

(2) With regard to service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be as follows:

(a) in the case of fixed-term contracts, where that term is less than or equal to forty-eight months: the total value for their full term;

(b) in the case of contracts without a fixed term or with a term greater than forty-eight months: the monthly value multiplied by 48.

Contracts into Lots

Division of contracts into lots.

56. Contracting entities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.

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Information on whether tenders may be submitted for one or several lots.

57. Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate, whether tenders may be submitted for one, for several or for all of the lots.

Right to limit the number of lots to be awarded to one tenderer.

58. Contracting entities may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest, to tender or to negotiate. Contracting entities shall indicate in the procurement documents the objective and non-discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

Award contracts combining several or all lots.

59. Where more than one lot may be awarded to the same tenderer, contracting entities may award contracts combining several or all lots where they have specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

Principles underlying the Procurement Process

Clarity of the procurement documents.

60. (1) The procurement document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process.

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

(3) In the event of an accelerated open procedure as referred to in regulation 91(3), the period mentioned in sub-regulation (2) shall be four days.

Equal treatment, transparency and proportionality.

61. (1) Contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

(2) The design of the procurement shall not be made with the intention of excluding it from the scope of these regulations or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain

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economic operators.

(3) In so far as they are covered by Annexes 3, 4 and 5 and the General Notes to the European Union's Appendix I to the GPA and by the other international agreements by which the Union is bound, contracting entities shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the Union.

Confidentiality.

62. (1) Subject to the obligations established under these regulations and or any other law obliging the Director or the contracting entity to disclose information, a contracting entity and, or the Director shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

(2) Without prejudice to the provisions of these regulations, the following information shall not be considered as confidential:

(a) the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;

(b) the name of the sub-contractors;

(c) the documentation submitted by economic operators attesting that they comply with selection criteria;

(d) technical information which is already public.

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

Publication

Periodic indicative notice.

63. (1) Contracting entities may make known their intentions of planned procurements through the publication of a periodic indicative notice. Those notices shall contain the information set out in Schedule 8, Part A, Section I. They shall be published either by the Publications Office of the European Union or by the contracting entities on their buyer profiles in accordance with

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regulation 2(b) of Schedule 10. Where the prior information notice is published by the contracting entities on their buyer profile, they shall send a notice of the publication on their buyer profile to the Publications Office of the European Union in accordance with regulation 3 of Schedule 10. Those notices shall contain the information set out in Schedule 8, Part B.

Contract notices.

64. (1) Contract notices may be used as a means of calling for competition in respect of all procedures.

(2) Contract notices shall contain the information set out in the relevant part of Schedule 11 and shall be published in accordance with regulation 66.

Contract award notices.

65. (1) Not later than thirty days after the conclusion of a contract or of a framework agreement following the decision to award or conclude it, contracting entities shall send a contract award notice on the results of the procurement procedure.

(2) Such notice shall contain the information set out in Schedule 12 and shall be published in accordance with regulation 66.

(3) In the case of framework agreements concluded in accordance with regulations 143 to 146, contracting entities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement:

Provided that contracting entities shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In that case, contracting entities shall send the grouped notices within thirty days of the end of each quarter.

(4) Contracting entities shall send a contract award notice within thirty days after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within thirty days of the end of each quarter.

(5) The information provided in accordance with Schedule 19 and intended for publication shall be published in accordance with Schedule 10. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

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(6) In the case of contracts for research-and-development services ("R & D services"), the information concerning the nature and quantity of the services may be limited to:

(a) the indication "R & D services" where the contract has been awarded by a negotiated procedure without a call for competition in accordance with regulations 125(b), 126(b) and 127(b);

(b) information at least as detailed as was indicated in the notice that was used as a means of calling for competition.

(7) Information provided in accordance with Schedule 12 and marked as not being intended for publication shall be published only in simplified form and in accordance with Schedule 10 for statistical purposes.

Form and manner of publication of notices.

66. (1) Notices referred to in regulations 63 to 65 are obligatory only in respect to tenders with an estimated value which meets or exceeds the threshold established under Schedule 5 and shall include the information set out in Schedules 8 Part A and Part B, 11 and 12 in the format of standard forms, including standard forms for corrigenda.

(2) Notices referred to in regulations 63 to 65 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Schedule 10.

(3) Contracting entities shall be able to supply proof of the dates on which notices are dispatched.

(4) The confirmation of the receipt of the notice and the publication of the information sent by the Publications Office of the European Union shall constitute proof of publication.

(5) Notices referred to in regulations 63 to 65 shall be published in full in the official language(s) of the institutions of the Union chosen by the contracting entity. That language version or those language versions shall constitute the sole authentic text(s).

(6) Contracting entities may publish notices for works, supply or service contracts that are not subject to the publication requirements laid down in these regulations provided that those notices are sent to the Publications Office of the European Union by electronic means in accordance with the format and procedures for transmission indicated in Schedule 10.

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Publication at national level.

67. (1) Unless otherwise authorised by the Director, tenders issued with an estimated value which falls under regulation 30(1)(b) shall be published through government's e-procurement platform:

Provided that if the contracting authority does not make use of the government's e-procurement platform it shall advertise the tender on the Gazette.

(2) Notices referred to in regulations 63 to 65 and the information contained therein shall not be published at national level before the publication pursuant to regulation 66:

Provided that, publication may in any event take place at the national level where contracting entities have not been notified of the publication within forty-eight hours after confirmation of the receipt of the notice in accordance with regulation 66.

(3) Notices and advertisements published locally shall not contain information other than that contained in the notices dispatched to the Publications Office of the European Union or published on a buyer profile, but shall indicate the date of dispatch of the notice to the Publications Office of the European Union or its publication on the buyer profile.

(4) Periodic indicative notices shall not be published on a buyer profile before the dispatch to the Publications Office of the European Union of the notice of their publication in that form. They shall indicate the date of that dispatch.

Contest notice.

68. (1) Contracting entities that intend to organise a design contest with an estimated value which meets or exceeds the threshold established under Schedule 5 shall call for competition by means of a contest notice.

(2) Where contracting entities intend to award a subsequent service contract pursuant to regulation 126(g), this shall be indicated in the design contest notice.

(3) Contracting entities that have held a design contest shall make the results known by means of a notice.

(4) The call for competition shall include the information set out in Schedule 18 and the notice of the results of a design contest shall include the information set out in Schedule 19 in the format of standard forms.

(5) The notice of the results of a design contest shall be forwarded to the Publication Office of the European union within

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thirty days of the closure of the design contest.

(6) Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators, such information may be withheld from publication.

(7) The provisions of regulation 66 shall also apply to notices relating to design contests.

Preliminary market consultations.

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

(2) Subject to the provisions of these regulations, contracting entities may, for example, seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

Communications

Rules applicable to communication.

70. (1) All communication and information exchanged under these regulations, including electronic submission, shall be performed using electronic means of communication in accordance with the requirements of this regulation.

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

(3) Notwithstanding the provisions of sub-regulations (1) and (2), contracting entities shall not be obliged to require electronic means of communication in the submission process in the following situations:

(a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;

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(b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;

(c) the use of electronic means of communication would require specialised office equipment that is not generally available to contracting entities;

(d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

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

(5) Contracting entities are not obliged to require electronic means of communication in the submission process to the extent that the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access within the meaning of sub-regulations (10) and (11).

(6) It shall be the responsibility of the contracting entities requiring, in accordance with sub-regulation (3), means of communication other than electronic means in the submission process to indicate in the individual report referred to in regulation 172, as the case may be, the reasons for this requirement. Where applicable, contracting entities shall indicate in the individual report the reasons why use of means of communication other than electronic means has been considered necessary in application of sub-regulation (5).

(7) Oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, provided that the content of the oral communication is documented to a sufficient degree. For this purpose, the essential elements of a procurement procedure include the procurement documents, requests for participation, confirmations

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of interest and tenders. In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication.

(8) In all communication, exchange and storage of information, contracting entities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

(9) For public works contracts and design contests the contracting entities require the use of specific electronic tools, such as of building information electronic modelling tools or similar. In such cases the contracting entities shall offer alternative means of access, as provided for in sub-regulations (10) and (11), until such time as those tools become generally available within the meaning of sub-regulation (2).

(10) Contracting entities may, where necessary, require the use of tools and devices which are not generally available, provided that the contracting entities offer alternative means of access.

(11) Contracting entities shall be deemed to offer suitable alternative means of access in any of the following situations, where they:

(a) offer unrestricted and full direct access free of charge by electronic means to those tools and devices from the date of publication of the notice in accordance with Schedule 10 or from the date when the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which those tools and devices are accessible;

(b) ensure that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not attributable to the tenderer concerned, may access the procurement procedure through the use of provisional tokens made available free of charge online; or

(c) support an alternative channel for electronic submission of tenders.

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(12) In addition to the requirements set out in Schedule 7, the following rules shall apply to tools and devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:

(a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;

(b) contracting entities shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure; that level shall be proportionate to the risks attached:

Provided that the requirement established under this paragraph shall be deemed to be satisfied when electronic means of communications are carried out through government's e-procurement platform;

(c) where a contracting entity acting within an overall framework conclude that the level of risks, assessed under paragraph (b), is such that advanced electronic signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council are required, contracting entities shall accept advanced electronic signatures supported by a qualified certificate, taking into account whether those certificates are provided by a certificate services provider, which is on a trusted list provided for in Commission Decision 2009/767/EC, created with or without a secure signature creation device, subject to compliance with the following conditions:

(i) the contracting entities shall establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU and shall put in place necessary measures to be able to process these formats technically; in case a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities. The validation possibilities shall allow the contracting entity to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate;

(ii) where a tender is signed with the support of a

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qualified certificate that is included on a trusted list, the contracting authorities shall not apply additional requirements that may hinder the use of those signatures by tenderers.

(13) In respect of documents used in the context of a procurement procedure that are signed by a competent authority or by another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance with the requirements set out in Article 1(2) of Decision 2011/130/EU.

(14) For the purposes of sub-regulation (13), the competent authority or entity shall put in place the necessary measures to be able to process that format technically by including the information required for the purpose of processing the signature in the document concerned. Such documents shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.

Communication of technical specifications.

71. (1) On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts. Those specifications shall be made available by electronic means through unrestricted and full direct access free of charge.

(2) The technical specifications shall be transmitted by other means, other than electronic means, where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in regulation 70(1) to (6) or where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply regulation 62(3).

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

Electronic availability of procurement documents.

72. (1) Contracting entities shall by electronic means offer unrestricted and full direct access free of charge to the procurement documents, with an estimated value which falls under Schedule 5, from the date of publication of a notice in accordance with regulation 66 or the date on which an invitation to confirm interest was sent.

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(2) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents, with an estimated value which falls under Schedule 5, cannot be offered for one of the reasons set out in regulation 70(3), contracting entities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by other means than electronic means.

(3) In the cases mentioned in sub-regulation (2) the time limit for the submission of tenders shall be prolonged by five days, except in cases of duly substantiated urgency referred to in regulation 91(3).

(4) With regard to tenders with an estimated value which falls under Schedule 5 where unrestricted and full access free of charge by electronic means to certain procurement documents cannot be offered because contracting entities intend to apply regulation 62(3), they shall indicate in the notice or the invitation to confirm interest or, where the means of calling for competition is a notice on the existence of a qualification system, in the procurement documents, which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned.

(5) In the cases mentioned in sub-regulation (4), the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency referred to in regulation 91(3).

Invitations to candidates.

73. (1) In restricted procedures, competitive dialogue procedures, innovation partnerships and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or, to take part in the dialogue or to negotiate.

(2) The invitations referred to in sub-regulation (1) shall include a reference to the electronic address on which the procurement documents have been made directly available by electronic means. The invitations shall be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons set out in regulation 72(2) and (3) or 72(4) and (5) and have not already been made otherwise available. In addition, the invitations referred to in sub-regulation (1) shall include the information set out in Schedule 13.

Electronic catalogues.

74. (1) Where the use of electronic means of communication is required, contracting entities may require tenders

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to be presented in the format of an electronic catalogue or to include an electronic catalogue.

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

(3) Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting entity.

(4) Electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with regulation 70.

(5) Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:

(a) state so in the contract notice;

(b) indicate in the procurement documents all the necessary information pursuant to regulation 70(12) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

(6) Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, contracting entities shall use one of the following methods:

(a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or

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

(7) Where contracting entities reopen competition for specific contracts in accordance with sub-regulation (6)(b), they shall notify tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements

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of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

(8) Contracting entities shall allow for an adequate period between the notification and the actual collection of information.

(9) Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

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

(11) Contracting entities may also award contracts based on a dynamic purchasing system in accordance with the provisions of sub-regulation (6)(b) and sub-regulations (7), (8) and (9) provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting entity.

(12) For the purposes of sub-regulation (11), the catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity's intention to constitute tenders by means of the procedure set out in sub-regulation (6)(b).

Time Limits and Technical Specifications

Setting time limits.

75. (1) When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders without prejudice to the minimum time limits set out in regulations 90 to 123.

(2) Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which shall be longer than the minimum time limits set out in regulations 90 to 123, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders.

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

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(a) where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of tenders. In the event of an accelerated open procedure as referred to in regulation 91(3), that period shall be four days;

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

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

(5) Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, contracting entities shall not be required to extend the time limits.

(6) Late tenders shall be disqualified from the process.

Technical specifications.

76. (1) The technical specifications as defined in regulation 2 shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, service or supply.

(2) Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

(3) The technical specifications may also specify whether the transfer of intellectual property rights will be required.

(4) For all procurement which is intended for use by natural persons, whether general public or staff of the contracting entity, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

(5) Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

(6) Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have

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the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(7) Without prejudice to mandatory technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words "or equivalent";

(c) in terms of performance or functional requirements as referred to in paragraph (a), with reference to the technical specifications referred to paragraph (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to the technical specifications referred to in paragraph (b) for certain characteristics, and by reference to the performance or functional requirements referred to in paragraph (a) for other characteristics.

(8) Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to sub-regulation (7) is not possible. Such reference shall be accompanied by the words "or equivalent".

(9) Where a contracting entity uses the option of referring to the technical specifications referred to in sub-regulation (7)(b), it

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shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in regulation 78 that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

(10) Where a contracting entity uses the option laid down in sub-regulation (7) (a) to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

(11) In its tender, the tenderer shall prove by any appropriate means, including those referred to in regulation 78, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting entity.

Labels.

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

(a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;

(c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations may participate;

(d) the labels are accessible to all interested parties;

(e) the label requirements are set by a third party over which the economic operator applying for the label cannot

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exercise a decisive influence.

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

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

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

(5) Where a label fulfils the conditions provided in sub-regulation (1)(b), (c), (d) and (e) but also sets out requirements not linked to the subject-matter of the contract, contracting entities shall not require the label as such but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Test reports, certification and other means of proof.

78. (1) Contracting entities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

(2) Where contracting entities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting entities.

(3) Contracting entities shall accept other appropriate means of proof than those referred to in sub-regulations (1) and (2), such as a technical dossier of the manufacturer where the economic operator concerned had no access to the certificates or test reports referred to in sub-regulations (1) and (2), or no possibility of obtaining them within the relevant time limits, provided that the lack of access is not

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attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

The Tenderer

Types of tenderers.

79. A tenderer can be either a natural or a legal person or a public entity or group of such persons and/or entities.

Economic operators established in another Member State.

80. Economic operators that, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of Malta, they would be required to be either natural or legal persons:

Provided that in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

Groups of economic operators.

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

(2) Where necessary, contracting entities may clarify in the procurement documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in regulations 164 to 169 provided that this is justified by objective reasons and is proportionate.

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

(4) Contracting entities may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

Prior involvement of candidates or tenderers.

82. (1) Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting entity, whether in the context of regulation 69 or not, or has otherwise been

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involved in the preparation of the procurement procedure, the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

(2) Such measures shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

(3) Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the individual report required by the provisions of Part III or regulation 172, as the case may be.

Subcontracting.

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

(2) The tenderer as the main contractor is liable for all acts or omissions carried out by his subcontractors.

(3) In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting entity, after the award of the contract and at the latest when the performance of the contract commences, the contracting entity shall require the main contractor to indicate to the contracting entity the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at this point in time. The contracting entity shall require the main contractor to notify the contracting entity of any changes to this information during the course of the contract as well as of the required information for any new subcontractors which it subsequently involves in such works or services:

Provided that this sub regulation does not apply to suppliers.

(4) Where necessary the required information shall be accompanied by the subcontractors' self-declarations as referred to in

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regulation 71(4).

(5) Contracting entities may extend the obligations provided for in sub-regulation (3) to:

(a) supply contracts, services contracts (other than those concerning services to be provided at the facilities under the direct oversight of the contracting authority) or suppliers involved in works or services contracts;

(b) sub-contractors of the main contractor's sub-contractors or further down the subcontracting chain.

(6) Sub-contractors are to observe the obligations established under regulation 34(m) during the execution of the contracts.

(7) The contracting authority shall have the right to suspend payments and, or even opt to dissolve the contract if the main contractor fails to abide by his obligations under this regulation.

The Chosen Bid

Rules applicable to the selection of applicants.

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

(a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with regulation 164 or regulation 165(1) shall exclude economic operators identified in accordance with such rules and fulfilling such criteria;

(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to regulations 164 and 165;

(c) in restricted procedures, in negotiated procedures with a call for competition, in competitive dialogues and in innovation partnerships, with an estimated value which falls under regulation 30(b) they shall where appropriate reduce in accordance with regulation 165(2) the number of candidates selected pursuant to paragraph (a) and (b).

(2) When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

(a) impose administrative, technical or financial

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conditions on certain economic operators which would not be imposed on others;

(b) require tests or evidence which would duplicate objective evidence already available.

Valid bid.

85. (1) Without prejudice to Part VI and regulation 168(6), a contracting authority must ensure that an economic operator must *ab initio* be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.

(2) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit:

Provided that such requests are made in full compliance with the principles of equal treatment and transparency.

(3) The financial bid cannot be changed with the exception of the correction of evident arithmetic errors as may be allowed in the procurement document.

(4) Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in regulations 170 and 174 taking into account the provisions of regulation 175.

Part II
Boards, Committees and Tribunals

Applicability of the Public Procurement Regulations, 2016.

86. Regulations 64 to 99 of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to these regulations.

Part III
Rules applicable to Departmental Tenders

Applicability of the Public Procurement Regulations, 2016.

87. (1) Regulations 100 and 102 to 113 of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to these regulations.

(2) For the purposes of these regulations, the negotiated procedure with prior publication shall also not be available for departmental tenders.

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Departmental call for tenders.

88. Where the estimated value meets or exceeds ten thousand euro (€10,000) but does not exceed the threshold established under regulation 30(1)(a), the equipment, stores, works or services may be procured after a departmental call for tenders.

Part IV
Types of Procurement Procedures

Various methods of procurement.

89. Contracts may be awarded using the open procedure, the restricted procedure, the negotiated procedure with prior call for competition, competitive dialogue, the negotiated procedure without prior call for competition and design contests.

Open procedure.

90. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

Time limit for the receipt of tenders for a call for competition.

91.(1) (a) A call for competition with an estimated value which falls under the threshold established under regulation 30(b) shall have a minimum time limit for the receipt of tenders which shall be thirty-five days from the date of publication.

(b) When the estimated value of a call for tenders meets or exceeds the value in Schedule 5, this call shall be made by means of a contract notice and the time limit mentioned paragraph (a) shall start to run from the date on which the contract notice was sent to the Publications Office of the European Union.

(c) The tender shall be accompanied by the information for qualitative selection that is requested by the contracting entity.

(2) Where contracting entities have published a periodic indicative notice the minimum time limit for the receipt of tenders, as laid down in the sub-regulation (1)(a), may be shortened to fifteen days, provided that all of the following conditions are fulfilled:

(a) the prior information notice included, in addition to the information required for the contract notice in section I of Part A of Schedule 8, all the information required by section II of Part A of Schedule 8, in so far as that information was available at the time the prior information notice was published;

(b) the prior information notice was sent for publication between thirty-five days and twelve months before the date on which the contract notice was sent.

(3) Where a state of urgency duly substantiated renders impracticable the time limit laid down in sub-regulation (1)(a), the contracting entity, upon approval of the Director, may fix a time limit

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which shall be not less than fifteen days from the date on which the contract notice was sent to the Publications Office of the European Union.

(4) The contracting entity may reduce by five days the time limit for receipt of tenders set out in sub-regulation (1)(a) where it accepts that tenders may be submitted by electronic means in accordance with regulation 70(9) to (14).

(5) In the case of a contract with an estimated value which is less than the threshold established under regulation 30(1)(a0, the minimum time limit for the receipt of tenders shall be twenty days from the date on which the tender has been published:

Provided that this time limit can be reduced to fifteen days in cases of extreme urgency with the prior approval of the head of the contracting entity.

Examination of tenders in open procedures.

92. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of regulations 84, 85, 164 to 171 and 174 are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to regulation 164 or who does not meet the selection criteria set out by the contracting entity in accordance with regulations 165(1) and 164.

Restricted Procedure

Request to participate in restricted procedures.

93. In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.

Time limit for the receipt of requests.

94. (1) The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than thirty days from the invitation to confirm interest was sent and shall in any event not be less than fifteen days as the case may be.

(2) Where the estimated value of the restricted procedure meets or exceeds the values established under Schedule 5, the time limit established in sub-regulation (1) shall start to run from the date when the contract notice is sent to the Publication Office of the European Union.

Eligible economic operators.

95. Only those economic operators invited to do so by the contracting entity following its assessment of the information provided may submit a tender. Contracting entities may limit the number of suitable candidates to be invited to participate in the

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procedure in accordance with regulation 165(2).

Time limit for the receipt of tenders.

96. The minimum time limit for the receipt of tenders shall at least be ten days from the date on which the invitation to tender was sent.

Negotiated procedure with prior call for competition.

97. (1) Where the estimated value of a call for competition meets or exceeds the threshold established under regulation 30(1)(b), a contracting authority may after obtaining the prior approval of the Director issue a negotiated procedure with a prior call for competition.

(2) In granting his approval the Director may impose any condition he may deem fit to impose.

Submission by the bidder.

98. In negotiated procedures with prior call for competition, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity.

Time limits of requests to participate.

99. The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than thirty days from the date on which the contract notice was sent in case of tenders with an estimated value which meet or exceed the values in Schedule 5, or from the publication of the procurement document and shall in any event not be less than fifteen days.

Participation.

100. Only those economic operators invited by the contracting entity following its assessment of the information provided may participate in the negotiations. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 165(2).

Time limits for the call for tenders.

101. The time limit for the call for tenders shall at least ten days from the date on which the invitation to tender was sent.

Innovation partnership.

102. (1) Upon being requested by the contracting entity the Director may, subject to any conditions he may deem appropriate to impose, approve in writing the use of the innovation partnership procedure. The Director may impose any condition he may deem necessary for the correct execution of this procedure.

(2) The request mentioned must be supported by documents demonstrating that the need of the contracting entity cannot be met by purchasing products, services or works already available on the market.

Request to participate.

103. In an innovation partnership procedure, any economic operator may submit a request to participate in response to a contract

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notice for tenders with an estimated value which meets or exceeds the value under Schedule 5 or a call for competition, as the case may be, by providing the information for qualitative selection that is requested by the contracting entity.

Content of the procurement document.

104. In the procurement documents, the contracting entity shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

Number of partners.

105. The contracting entity may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

Time limit for receipt of requests.

106. (1) The minimum time limit for receipt of requests to participate shall be thirty days from the publication of the call for competition. Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the procedure. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 165(2). The contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with regulation 170(2) and (3).

(2) Where the estimated value of the innovation partnership meets or exceeds the values established under Schedule 5 the time limit established in sub-regulation (1) shall start to run from the date when the contract notice is sent to the Publication Office of the European Union.

Aim.

107. The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting entities and the participants.

Structure.

108. The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

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Termination.

109. Based on those targets, the contracting entity may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting entity has indicated in the procurement documents those possibilities and the conditions for their use.

Negotiation.

110. (1) Unless otherwise provided for in this regulation, contracting entities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

(2) The minimum requirements and the award criteria shall not be subject to negotiations.

(3) During the negotiations, contracting entities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to sub-regulation (5), in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following those changes, contracting entities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(4) In accordance with regulation 62, contracting entities shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(5) Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting entity shall indicate whether it will use that option.

Selection.

111. (1) In selecting candidates, contracting entities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

(2) Only those economic operators invited by the contracting entity following its assessment of the requested information may

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submit research and innovation projects aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions.

Intellectual property rights.

112. In the procurement documents, the contracting entity shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, the contracting entity shall not, in accordance with regulation 62, reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

Execution.

113. The contracting entity shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

Competitive dialogue.

114. Upon being requested by the contracting authority, the Director may, subject to any conditions he may deem appropriate to impose, approve in writing the use of the competitive dialogue.

Request to participate.

115. Any economic operator may submit a request to participate in response to either a contract notice in respect to tenders with an estimated value which meets or exceeds the threshold in Schedule 5 or a call for competition, as the case may be, by providing the information for qualitative selection that is requested by the contracting entity.

Time limit.

116. The minimum time limit for receipt of requests to participate shall be thirty days from the date on which the contract notice was sent or from when the call for competition was published as the case may be.

Participation.

117. Only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the dialogue. Contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 165(2). The contract shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with regulation 170(2).

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Needs and requirements of the contracting authority.

118. Contracting entities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in that notice and, or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria and set out an indicative time-frame.

Dialogue.

119. (1) Contracting entities shall open, with the participants selected in accordance with the relevant provisions of regulations 84, 85, 92 and 164 to 169, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the procurement with the chosen participants during this dialogue.

(2) During the dialogue, contracting entities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

(3) Subject to the provisions of regulation 62, contracting entities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(4) Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting entity shall indicate whether it will use that option.

(5) The contracting entity shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

(6) Having declared that the dialogue is concluded and having so informed the remaining participants, contracting entities shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.

Clarification, specification, etc.

120. Those tenders may be clarified, specified and optimised at the request of the contracting entity. However, such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public

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procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

Assessment.

121. Contracting entities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

Negotiations.

122. At the request of the contracting entity, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with regulation 170(2) may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract provided this does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

Prizes or payments.

123. Contracting entities may specify prizes or payments to the participants in the dialogue.

Negotiated procedure without prior publication

Use of the negotiated procedure without prior publication.

124. (1) Upon being requested in writing by the contracting entity, the Director may, subject to any conditions he may deem appropriate to impose, approve the use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts as specified in the following regulations.

(2) The request made by the contracting authority must duly substantiate the need for the negotiated procedure.

(3) The Director shall not allow the use of this procedure in any other cases than those referred to under this Part.

Public works contracts.

125. The negotiated procedure without prior publication may be used for public works contracts in the following instances:

(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;

(b) where a contract is purely for the purpose of

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research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

(c) where the works, can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights:

Provided that the exceptions set out in sub-paragraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting entity, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting entity;

(e) for new works consisting in the repetition of similar work assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in a manner provided for under these regulations:

Provided that the basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply regulations 30, 42 and Schedule 5.

Public service contracts.

126. The negotiated procedure without prior publication may be used for public service contracts in the following instances:

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(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;

(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

(c) where the services can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights:

Provided that the exceptions set out in sub-paragraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting entity, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting entity;

(e) for new services consisting in the repetition of services assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works or services conform to a basic project for which a first contract was awarded according to a procedure in a manner provided for under these regulations:

Provided that the basic project shall indicate the extent of possible additional works or services and the

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conditions under which they will be awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting entities when they apply regulations 30, 42 and Schedule 5;

(f) for purchases of services under particularly advantageous conditions from either a supplier which is definitively winding up its business activities or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;

(g) where the service contract concerned follows a design contest organised in accordance with these regulations and is to be awarded, under the rules provided for in the design contest, to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

Public supply contracts.

127. The negotiated procedure without prior publication may be used for public supply contracts in the following instances:

(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;

(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

(c) where the supplies can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights:

Provided that the exceptions set out in sub-

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paragraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting entity, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting entity;

(e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

(f) for supplies quoted and purchased on a commodity market;

(g) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;

(h) for purchases of supplies under particularly advantageous conditions from either a supplier which is definitively winding up its business activities or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations.

Tender considered not to be suitable.

128. For the purposes of this Part a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to regulations 165(1) or 164, or does not meet the selection criteria laid down by the contracting entity pursuant to regulations 164, 166 or 165.

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Design Contests

Applicability.

129. This Part applies to design contests organised as part of a procurement procedure for a service contract,

Rules on the organisation of design contests and the selection of participants.

130. (1) When organising design contests, contracting entities shall apply procedures which are adapted to regulations 2 to 32, 34, 35, 43 to 55, 61, 62, 68, 70, 80, 81 and 129 to 133 and Part IX.

(2) The admission of participants to design contests shall not be limited:

(a) by reference to the territory or part of the territory of a Member State;

(b) on the grounds that, they would be required to be either natural or legal persons.

(3) Where design contests are restricted to a limited number of participants, the contracting entities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Composition of the jury.

131. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

Decisions of the jury.

132. (1) The jury shall be autonomous in its decisions or opinions.

(2) The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

(4) Anonymity shall be observed until the jury has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspect of the projects.

(6) Complete minutes shall be drawn up of the dialogue

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between jury members and candidates.

Reserved Contracts and Contracts For Social and Other Specific Services

Reserved contracts.

133. (1) Contracting entities may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least thirty per cent of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

(2) The call for competition shall make reference to this regulation.

Contracts for social and other specific services.

134. Contracts for social and other specific services listed in Schedule 16 shall be awarded in accordance with this Part.

Publication of notices.

135. (1) Contracting entities intending to award a public contract for the services referred to in regulation 134 shall make known their intention by the following means:

(a) for public contracts with an estimated value which meets or exceeds the threshold established under paragraph (c) of Schedule 5:

(i) by means of a contract notice; or

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

(b) for public contracts with an estimated value which is less than the threshold mentioned under paragraph (c) of Schedule 5 by publishing it in the government e-procurement system:

Provided that this paragraph shall not apply where a negotiated procedure without prior publication could have been used in conformity with regulation 126 for the award of a public service contract.

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Contract award notice.

136. In respect to public contracts with an estimated value which meets or exceed the threshold established under paragraph (c) of Schedule 5, contracting entities that have awarded a contract for the services referred to in regulation 134 shall make known the results by means of contract award notice. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within thirty days of the end of each quarter.

Contents and publication of notices.

137. (1) The notices referred to in under this Part shall contain the information referred to in Schedule 17, respectively in parts A, B, C or D, in accordance with the standard model notices. The Commission shall establish the standard forms by means of implementing acts.

(2) The notices referred to under this Part shall be published in accordance with regulation 66.

Principles for awarding contracts.

138. (1) Contracting entities shall determine in the respective procurement documents the procedures that they are going to be applied in connection with the award of a call for tenders subject to what is stated in regulations covered by this Part.

(2) Contracting entities shall ensure that the procedures mentioned in sub-regulation (1) adequately cater for the principles of transparency and equal treatment of economic operators.

Requirements of contracting entity.

139. (1) Contracting entities may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation.

(2) Contracting entities shall ensure that the procedures identified in sub-regulation (1) shall be reasonable and proportionate, in particular, the time limits allowed for the submission of the offer shall be sufficient to allow bidders to submit an offer.

(3) In establishing the procedures mentioned under this Part contracting entities may, subject to what is stated in the regulations established under this Part, also decide to apply the regulations established for other procurement procedures.

(4) Contracting entities may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.

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Reserved contracts for certain services.

140. (1) Contracting entities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in regulation 134, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

(2) An organisation referred to in sub-regulation (1) shall fulfil all of the following conditions:

(a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in sub-regulation (1);

(b) profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;

(c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and

(d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this regulation within the past three years.

Duration of reserved contracts.

141. The maximum duration of the contract shall not be longer than three years.

Duty to refer to this Part.

142. The call for competition issued under this title shall make reference to the regulations under this Part.

Part V
Aggregation of Procurement

Framework agreements.

143. Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in these regulations.

Duration.

144. The term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Award on objective rules and criteria.

145. (1) Contracts based on a framework agreement shall be awarded on the basis of objective rules and criteria, which may

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include reopening the competition among those economic operators party to the framework agreement as concluded. These rules and criteria shall be set out in the procurement documents for the framework agreement.

(2) The objective rules and criteria, shall ensure equal treatment of the economic operators who are parties to the agreement. Where a reopening competition is included, contracting entities shall set a time limit which is sufficiently long to allow tenders for each specific contract to be submitted and contracting entities shall award each 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.

Use of framework agreements.

146. Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Dynamic purchasing systems.

147. (1) For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, contracting entities may use a dynamic purchasing system.

(2) The dynamic purchasing system shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria.

(3) It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

Applicable rules.

148. (1) In order to procure under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure as applicable.

(2) All the candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with regulation 165(2). Where contracting entities have divided the system into categories of products, works or services in accordance with sub-regulation (1), they shall specify the applicable selection criteria for each category.

(3) Notwithstanding the provisions of regulations 93 to 96, the

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following time limits shall apply:

(a) the minimum time limit for receipt of requests to participate shall be thirty days from the date on which the contract notice is sent to the Publication Office of the European Union or when the call for competition is published as the case may be. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;

(b) the minimum time limit for receipt of tenders shall be at least ten days from the date on which the invitation to tender is sent. The provisions of regulation 96 shall apply.

Communication

149. All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with regulation 70(1) to (6), (8) and (10) to (14).

Obligations of the contracting authorities.

150. (1) For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:

(a) publish a call for competition making it clear that a dynamic purchasing system is involved;

(b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;

(c) indicate any division into categories of products, works or services and the characteristics defining them;

(d) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in conformity with regulation 72.

(2) Contracting entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in regulation 148.

(3) Contracting entities shall finalise their assessment of the requests identified under sub-regulation (2) in accordance with the selection criteria within ten working days following their receipt.

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(4) The deadline established in sub-regulation (3) may be prolonged to fifteen working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

(5) Notwithstanding the provisions of sub-regulations (2), (3) and (4), as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting entities may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. Contracting entities shall indicate in the procurement documents the length of the extended period that they intend to apply.

(6) Contracting entities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

(7) Contracting entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with regulation 73. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

(8) They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

Updated self-declarations.

151. (1) Contracting entities who, pursuant to regulation 164, apply exclusion grounds and selection criteria provided for under the Public Procurement Regulations, 2016, may at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in regulation 225 of those regulations, within five working days from the date on which that request is transmitted.

(2) The provisions of regulations 228 and 229 of the Public Procurement Regulations, 2016, shall apply throughout the entire period of validity of the dynamic purchasing system.

Period of validity.

152. Contracting entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in the period of validity, using the following standard forms:

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(a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

(b) where the system is terminated, a contract award notice referred to in regulation 65.

Charges.

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

Electronic auctions.

154. Contracting entities may use electronic auctions, in which new prices, revised downwards, and, or new values concerning certain elements of tenders are presented.

Structure.

155. (1) Contracting entities shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

(2) Certain public service contracts and certain public works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

Use of electronic auction in other modes of procurement.

156. (1) In open or restricted procedures or competitive procedures with negotiation with an estimated value falling under regulation 30(1)(b), the contracting entities may decide that the award of a public contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

(2) In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in regulations 145 and 146 and on the opening for competition of contracts to be awarded under the dynamic purchasing system.

Basis of electronic auction.

157. The electronic auction shall be based on one of the following elements of the tenders:

(a) solely on prices where the contract is awarded on the basis of price only;

(b) on prices and, or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price-quality ratio or to the tender with the lowest cost using a cost-effectiveness

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approach.

Disclosure.

158. Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice or in the invitation to confirm interest as the case maybe. The procurement documents shall include at least the information set out in Schedule 9.

Initial evaluation.

159. Before proceeding with an electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

Admissibility of tenders.

160. (1) A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to regulations 164(1) or 165(1) and who meets the selection criteria, and whose tender is in conformity with the technical specifications without being irregular or unacceptable or unsuitable.

(2) In particular, tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting entity to be abnormally low, shall be considered as being irregular. In particular tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting entity's budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.

(3) A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to regulations 164(1) or 165(1) or does not meet the selection criteria set out by the contracting entity.

Invitation of admissible tenders.

161. (1) All tenderers that have submitted admissible tenders shall be invited simultaneously to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

(2) The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in regulation 170(7), (8), (9).

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(3) The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices and, or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

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

Communication

162. Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may, where this has been previously indicated, communicate other information concerning other prices or values submitted. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

Closing.

163. (1) Contracting entities shall close an electronic auction in one or more of the following manners:

(a) at the previously indicated date and time;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or

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

(2) Where the contracting entities intend to close an electronic auction in accordance with sub-regulation (1)(c) possibly in combination with the arrangements laid down in sub-regulation (1)(b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(3) After closing an electronic auction contracting entities shall award the contract in accordance with regulation 170 on the basis of the results of the electronic auction.

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Part VI
Exclusion and Black Listing of Economic Operators

Applicability of the Public Procurement Regulations, 2016.

164. Part VI of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to these regulations.

Part VII
Choice of participants and award of contracts

Criteria for qualitative selection.

165. (1) Contracting entities may establish objective rules and criteria for the exclusion and selection of tenderers or candidates; those rules and criteria shall be available to interested economic operators.

(2) Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures, in competitive dialogues or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

Applicability of regulations 217 to 213 of the Public Procurement Regulations, 2016.

166. Regulations 217 to 233 of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to these regulations.

Quality assurance standards and environmental management standards.

167. (1) Contracting entities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

(2) Where contracting entities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to the Eco-Management and

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Audit Scheme (EMAS) of the Union or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

(3) Where an economic operator had demonstrably no access to the certificates mentioned in sub-regulation (2), or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

Reliance on the capacities of other entities.

168. (1) With regard to criteria relating to economic and financial standing and to criteria relating to technical and professional abilities of the economic operator, an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting entity that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

(2) Contracting entities shall verify whether the other entities on whose capacity the economic operator intends to rely, fulfil the relevant selection criteria or whether there are grounds for exclusion or black listing, to which the contracting entities have referred The contracting entity shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or who is excluded or black listed in terms of Part VI of the Public Procurement Regulations, 2016.

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

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(4) Under the same conditions, a group of economic operators as referred to in regulations 80 and 81 may rely on the capacities of participants in the group or of other entities.

(5) In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting entities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in regulation 30(2) by a participant in that group.

System of qualification for economic operators.

169. The Minister shall have the authority to establish regulations for drawing up of a system of qualification of economic operators.

Award of Contract

Contract award criteria.

170. (1) Without prejudice to regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

(2) The most economically advantageous tender from the point of view of the contracting entity shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with regulation 171, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and, or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;

(b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or

(c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

(3) The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on

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quality criteria only.

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

(a) the specific process of production, provision or trading of those works, supplies or services; or

(b) a specific process for another stage of their life cycle.

(5) Award criteria shall be considered to be linked to the subject-matter of the public contract even where the factors established in sub-regulation (4) do not form part of their material substance.

(6) Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting entities shall verify effectively the accuracy of the information and proof provided by the tenderers.

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

(8) Those weightings may be expressed by providing for a range with an appropriate maximum spread.

(9) Where weighting is not possible for objective reasons, the contracting entity shall indicate the criteria in decreasing order of importance.

(10) The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm interest, in the invitation to tender or to negotiate, or in the specifications.

Life-cycle costing.

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

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(a) costs, borne by the contracting entity or other users, such as:

(i) costs relating to acquisition;

(ii) costs of use, such as consumption of energy and other resources;

(iii) maintenance costs;

(iv) end of life costs, such as collection and recycling costs;

(b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(2) Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting entity will use to determine the life-cycle costs on the basis of those data.

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

(a) it is based on objectively verifiable and non-discriminatory criteria. In particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;

(b) it is accessible to all interested parties;

(c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.

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

(5) A list of the common methods of calculation mentioned in sub-regulation (4) is established in Annex XV of Directive 2014/25/

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EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors.

Individual reports on procedures for the award of contracts.

172. (1) This regulation shall apply to every contract or framework agreement covered by these regulations, and every time a dynamic purchasing system, where the estimated value of such procedures falls under sub-regulation 30(1)(b).

(2) Contracting entities shall keep appropriate information on each contract or framework agreement covered by these regulations and each time a dynamic purchasing system is established. This information shall be sufficient to permit them at a later date to justify decisions taken in connection with:

(a) the qualification and selection of economic operators and the award of contracts;

(b) the use of negotiated procedures without a call for competition by virtue of regulations 124 to 128;

(c the non-application of regulations 14, 34, 39 to 42, 56 to 59, 63 to 69, 69, 71 to 78, 82 to 85, 92, 143 to 150, 154 to 171 and 174 to 180 by virtue of the derogations provided for in these regulations;

(d) where necessary, the reasons why other means of communication than electronic means for the electronic submission have been used.

(3) To the extent that the contract award notice drawn up pursuant to regulations 65 or 136 contains the information required in this regulation, contracting entities may refer to that notice.

(4) Contracting entities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract. The documentation shall be kept for a period of at least three years from the date of award of the contract.

(5) The report, or its main elements, shall be communicated to the Commission or the competent authorities, bodies or structures where they so request.

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Informing applicants for qualification, candidates and tenderers.

173. (1) Contracting entities and, or the Director, as the case may be, shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system.

(2) On request from the candidate or tenderer concerned, contracting entities shall, as soon as possible, and in any event within fifteen days from receipt of a written request, inform:

(a) any unsuccessful candidate of the reasons for the rejection of its request to participate;

(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in regulation 76(9), (10) and (11), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements;

(c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement;

(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

(3) Contracting entities may decide to withhold certain information referred to in sub-regulations (1) and (2) regarding the contract award, the conclusion of the framework agreement or the admittance to a dynamic purchasing system is to be withheld where its release would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

Abnormally Low Tenders and Variant Solutions

Abnormally low tenders.

174. (1) Contracting entities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services when the estimated value of these falls under regulation 30(1)(b).

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(2) The explanations referred to in sub-regulation (1) may in particular relate to:

(a) the economics of the manufacturing process, of the services provided or of the construction method;

(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance with obligations established in regulation 34(m);

(e) compliance with obligations referred to in regulation 83;

(f) the possibility of the tenderer obtaining State aid.

(3) The contracting entity shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in sub-regulation (2).

(4) Contracting entities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 34(m).

(5) Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.

Variants.

175. (1) For tenders having an estimated value which falls under regulation 30(1)(b), contracting entities may authorise or require tenderers to submit variants which meet the minimum requirement specified by the contracting entities.

(2) Contracting entities shall indicate in the procurement documents whether or not they authorise or require variants and, if so,

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the minimum requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted.

(3) Where variants are authorised or required, contracting entities shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

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

Part VIII
Contract Performance and Modifications

Conditions for performance of contracts.

176. Contracting entities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of regulation 170(4) and (5) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.

Modifications.

177. (1) For tenders with an estimated value which falls under regulation 30(1) and upon the prior approval of the Director a contracting entity can order modifications to the contract without a new procurement procedure in any of the following cases:

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

(b) for additional works, services or supplies by the original contractor irrespective of their value, that have become necessary and that were not included in the initial procurement where a change of contractor:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or

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interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) Would cause significant inconvenience or substantial duplication of costs for the contracting entity;

(c) where all of the following conditions are fulfilled:

(i) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;

(ii) the modification does not alter the overall nature of the contract;

(d) where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:

(i) an unequivocal review clause or option in conformity with paragraph (a);

(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of these regulations; or

(iii) in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors;

(e) where the modifications, irrespective of their value, are not substantial within the meaning of sub-regulation (5):

Provided that when a variation cumulatively exceeds the amounts established under sub-regulation (3), the contracting entity shall seek the prior approval of the Director.

(2) Contracting entities having modified a contract in the cases set out under sub-regulation (1)(b) and (c) shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall contain the information set out in Schedule 15 and shall be published in accordance with regulation 78.

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(3) Without any need to verify whether the conditions set out under sub-regulation (5)(a) to (d) are met, contracts may equally be modified without a new procurement procedure or ask for the prior approval of the director in accordance with these regulations being necessary where the value of the modification is below both of the following values:

(a) the thresholds set out in regulation 15; and

(b) ten per cent of the initial contract value for service and supply contracts and below fifteen per cent of the initial contract value for works contracts:

Provided that, the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

(4) For the purpose of the calculation of the price mentioned in sub-regulation (3), the updated price shall be the reference value when the contract includes an indexation clause.

(5) A modification of a contract or a framework agreement during its term shall be considered to be substantial within the meaning of sub-regulation (1)(e), where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to the provisions of sub-regulations (1), (2) and (3), a modification shall be considered to be substantial where one or more of the following conditions is met:

(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;

(b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(c) the modification extends the scope of the contract or framework agreement considerably;

(d) where a new contractor replaces the one to which

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the contracting entity had initially awarded the contract in other cases than those provided for under sub-regulation (1)(d).

(6) A new procurement procedure in accordance with these regulations shall be required for other modifications of the provisions of a works, supply or service contract or a framework agreement during its term than those provided for under sub-regulations (1), (2) and (3).

Approval by Director.

178. (1) When a modification of a tender with an estimated value which falls under regulation 30(1)(b) which cumulatively exceeds the amounts established under regulation 177(3) is sought by the contracting entity, the latter shall seek the prior approval of the Director.

(2) In exceptional circumstances where the urgent nature of the modification to be carried out is such that the contracting entity cannot possibly wait for the prior approval of the Director, the contracting authority may proceed with the modification subject that it adheres to the conditions mentioned in regulation 177.

Procedure for the approval of modifications and appeals.

179. Regulations 248 to 260 of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to this regulation

Termination of contracts.

180. (1) Contracting entities can terminate a contract during its term, where:

(a) the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to regulation 177;

(b) the contractor has, at the time of contract award, been in one of the situations referred to in Part VI of the Public Procurement Regulations, 2016, and should therefore have been excluded from the procurement procedure;

(c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and these regulations that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of the TFEU;

(d) the contractor fails to discharge any obligation which he has contracted.

(2) If the contracting authority has no valid reason for the termination, it is to compensate the contractor for all his expenses and

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work and to pay him a sum to be fixed by the court, according to circumstances, but not exceeding the profits which the contractor could have made by the contract.

(3) If the contracting authority has valid reason for the termination, it is to pay the contractor only such sum which shall not exceed the actual proven expenses and work of the contractor.

(4) Any payment made in advance to the contractor before the termination of the contract shall be applied to the sums due in terms of sub-regulations (2) or (3) and the contractor shall return any resulting excess to the contracting authority.

(5) The contract shall be immediately terminated when the contracting authority informs the contractor, by any means whatsoever, of his decision to terminate the contract, and this without the need of any authorization or confirmation by any court or Board.

Part IX
Remedies

Remedies.

181. Part IX of the Public Procurement Regulations, 2016, shall *mutatis mutandis* apply to these regulations.

Part X
Revocation

Revocation of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2005. Legal Notice 178 of 2005.

182. These regulations revoke the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2005, without prejudice to anything done or omitted to be done thereunder.

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Schedule 1

List of Activities as set out under paragraph (a) of the definition of the term Works Contracts

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

		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11		This class includes: - demolition of buildings and other structures, - clearing of building sites, - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc., - site preparation for mining, - overburden removal and other development and preparation of mineral properties and sites. This class also includes: - building site drainage, - drainage of agricultural or forestry land.	45110000

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.12	Test drilling and boring	This class includes: - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: - drilling of production oil or gas wells, see 11.20, - water well drilling, see 45.25, - shaft sinking, see 45.25, - oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	This class includes: - construction of all types of buildings construction of civil engineering constructions, - bridges, including those for elevated highways, viaducts, tunnels and subways, - long-distance pipelines, communication and power lines, - urban pipelines, urban communication and power lines, - ancillary urban works, - assembly and erection of prefabricated constructions on the site. This class excludes: - service activities incidental to oil and gas extraction, see 11.20, - erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,	45210000 Except: - 45213316 45220000 45231000 45232000
				- construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23, - building installation, see 45.3, - building completion, see 45.4, - architectural and engineering activities, see 74.20, - project manage-ment for construction, see 74.20.	

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.22	Erection of roof covering and frames	This class includes: - erection of roofs, - roof covering, - waterproofing.	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	This class includes: - construction of highways, streets, roads, other vehicular and pedestrian ways, - construction of railways, - construction of airfield runways, - construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, - painting of markings on road surfaces and car parks.	45212212 and DA03 45230000 except: - 45231000 - 45232000 - 45234115
				This class excludes: - preliminary earth moving, see 45.11.	
		45.24	Construction of water projects	This class includes construction of: - waterways, harbour and river works, pleasure ports (marinas), locks, etc., - dams and dykes, - dredging, - subsurface work.	45240000

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.25	Other construction work involving special trades	This class includes: - construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment, - construction of foundations, including pile driving, - water well drilling and construction, shaft sinking, - erection of non-self-manufactured steel elements, - steel bending, - bricklaying and stone setting, - scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms, - erection of chimneys and industrial ovens.	45250000 45262000
				This class excludes: - renting of scaffolds without erection and dismantling, see 71.32.	
	45.3		Building installation		45300000

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: - electrical wiring and fittings, - telecommunica-tions systems, - electrical heating systems, - residential antennas and aerials, - fire alarms, - burglar alarm systems, - lifts and escalators, - lightning conductors, etc.	45213316 45310000 Except: - 45316000
		45.32	Insulation work activities	This class includes: - installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes: - waterproofing, see 45.22.	45320000
		45.33	Plumbing	This class includes: - installation in buildings or other construction projects of:	45330000
				- plumbing and sanitary equipment, - gas fittings, - heating, ventilation, refrigeration or air-conditioning equipment and ducts, - sprinkler systems. This class excludes: - installation of electrical heating systems, see 45.31.	

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.34	Other building installation	This class includes: - installation of illumination and signalling systems for roads, railways, airports and harbours, - installation in buildings or other construction projects of fittings and fixtures n.e.c.	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: - application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: - installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,	45420000
				- interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: - laying of parquet and other wood floor coverings, see 45.43.	

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	This class includes: - laying, tiling, hanging or fitting in buildings or other construction projects of: - ceramic, concrete or cut stone wall or floor tiles, - parquet and other wood floor coverings carpets and linoleum floor coverings, - including of rubber or plastic, - terrazzo, marble, granite or slate floor or wall coverings, - wallpaper.	45430000
		45.44	Painting and glazing	This class includes: - interior and exterior painting of buildings, - painting of civil engineering structures, - installation of glass, mirrors, etc. This class excludes: - installation of windows, see 45.42.	45440000
		45.45	Other building completion	This class includes: - installation of private swimming pools, - steam cleaning, sand blasting and similar activities for building exteriors, - other building completion and finishing work n.e.c. This class excludes: - interior cleaning of buildings and other structures, see 74.70.	45212212 and DA04 45450000

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		NACE Rev[1]			CPV code
Section F		CONSTRUCTION			
Division	Group	Class	Subject	Notes	
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50		This class excludes: - renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

Schedule 2

List of Union Legal Acts

[Regulation 2(4)]

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria do not constitute 'special or exclusive rights' within the meaning of regulation 2(4). The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legal acts of the Union which do not constitute 'special or exclusive rights' within the meaning of regulation 2(4):

(a) granting authorisation to operate natural gas installations in accordance with the procedures laid down in Article 4 of Directive 2009/73/EC;

(b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;

(c) the granting in accordance with the procedures laid down in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;

(d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;

(e) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro which have been awarded on the basis of a

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competitive tendering procedure in accordance with Article 5(3) thereof, provided that its length is in conformity with Article 4(3) or (4) of that Regulation.

Schedule 3
List of Union Legal Acts
[Regulation 24(5) and (6)]

A. Transport or distribution of gas or heat

Directive 2009/73/EC

B. Production, transmission or distribution of electricity

Directive 2009/72/EC

C. Production, transport or distribution of drinking water

[No entry]

D. Contracting entities in the field of rail services

Rail freight transport

Directive 2012/34/EU

International rail passenger transport

Directive 2012/34/EU

National rail passenger transport

[No entry]

E. Contracting entities in the field of urban railway, tramway, trolleybus or motor bus services

[No entry]

F. Contracting entities in the field of postal services

Directive 97/67/EC

G. Extraction of oil or gas

Directive 94/22/EC

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H. Exploration for and extraction of coal or other solid fuels

[No entry]

I. Contracting entities in the field of seaport or inlandportor other terminal equipment

[No entry]

J. Contracting entities in the field of airport installations

[No entry]

Schedule 4
List of Central Purchasing Bodies

Department of Contracts

Schedule 5
Values of Thresholds
[Regulation 30(2)]

The value of the thresholds, net of vat, applicable to Public Contracts shall be the following:

(a) EUR 418,000 for supply and service contracts as well as for design contests;

(b) EUR 5,225,000 for works contracts;

(c) EUR 1,000,000 for service contracts for social and other specific services listed in Schedule 17.

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Schedule 6

Deadlines for the adoption of the Implementing Acts
(Regulation 25)

1. The implementing acts referred to in regulation 25 shall be adopted within the following periods:

(a) 90 working days where free access to a given market is presumed on the basis of regulation 24(5) and (6);

(b) 130 working days in cases other than those referred to in paragraph (a).

The periods set out in paragraphs (a) and (b) shall be prolonged by 15 working days where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of regulation 24(1) and (2) to the activity concerned in accordance with regulation 24(3),(4),(5) and (6).

Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in regulation 25(1) and (2) or, where the information to be supplied with the request is incomplete, on the working day following the receipt of the complete information.

The periods set out in the first sub-paragraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.

2. The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 or any other competent national authority to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first sub-paragraph of paragraph 1 shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.

Schedule 7

Requirements relating to tools and devices for the Electronic Receipt of Tenders, Requests to participate, Applications for qualification as well as Plans and Projects in Contests

Tools and devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must

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guarantee, through technical means and appropriate procedures, at least that:

(a) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;

(b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under those requirements;

(c) only authorised persons may set or change the dates for opening data received;

(d) during the various stages of the qualification procedure, the procurement procedure or contest, access to all data submitted, or to part thereof, must be possible only for authorised persons;

(e) only authorised persons must give access to data transmitted and only after the prescribed date;

(f) data received and opened in accordance with those requirements must remain accessible only to persons authorised to acquaint themselves therewith;

(g) where the access prohibitions or conditions referred to under paragraphs (b) to (f) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.

Schedule 8

Data to be inserted in the Periodic Indicative Notices

Part A

Information to be included in the Periodic Indicative Notice
(Regulation 63)

I. Information to be included in all cases

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. (a) For supply contracts: nature and quantity or value of the services

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or products to be supplied (CPV codes).

(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (CPV codes).

(c) For service contracts: intended total procurement in each of the service categories envisaged (CPV codes).

4. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.

5. Any other relevant information.

Part B

Information to be included in Notices of Publication of a Periodic Indicative Notice on a Buyer Profile not used as a means of calling for Competition
(Regulation 63)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. CPV Codes.

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

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

Schedule 9

Information to be included in the Procurement Documents relating to Electronic Auctions
(Regulation 158)

Where contracting entities have decided to hold an electronic auction, the procurement documents shall include at least the following details:

(a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in

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figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;

(c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(d) the relevant information concerning the electronic auction process;

(e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

Schedule 10
Features concerning Publication

1. Publication of notices

The notices referred to in Regulations 63, 64, 65, 68 135 and 169 must be sent by the contracting entities to the Publications Office of the European Union and published in accordance with the following rules:

(a) Notices referred to in regulations 63, 64, 65, 68 135 and 169 shall be published by the Publications Office of the European Union or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with regulation 63.

In addition, contracting entities may publish this information on the internet on a 'buyer profile' as referred to in point 2(b) below;

(b) The Publications Office of the European Union will give the contracting entity the confirmation referred to in the second sub-paragraph of regulation 66(4).

2. Publication of complementary or additional information

(a) Except where otherwise provided for in regulations 72(4) and (5) contracting entities shall publish the procurement documents in their entirety on the internet;

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(b) The buyer profile may include periodic indicative notices as referred to in regulation 63, 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. The buyer profile may also include periodic indicative notices used as a means of calling for competition, which are published at national level pursuant to regulation 67.

3. Format and procedures for the electronic transmission of notices

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

Schedule 11
Information to be included in Contract Notices
(Regulation 64)

A. Open Procedures

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained

2. Main activity exercised

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

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

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

6. For supplies and works:

(a) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured

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or the nature and extent of the services to be provided and general nature of the work (CPV codes);

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

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

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

7. For services:

(a) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference of the law, regulation or administrative provision;

(d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

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

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

10. E-mail or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in regulation 72, an indication of how the procurement documents can be accessed.

11. (a) Final date for receipt of tenders or indicative tenders where a

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dynamic purchasing system is introduced;

(b) Address to which they shall be sent;

(c) Language or languages in which they shall be drawn up.

12. (a) Where applicable, the persons authorised to be present at the opening of tenders;

(b) Date, time and place of such opening.

13. Where applicable, any deposits and guarantees required.

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

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

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

17. Period during which the tenderer is bound to keep open his tender.

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

19. Criteria referred to in regulation 170 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications.

20. Where appropriate, date(s) and the reference(s) to publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

21. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.

22. Date of dispatch of the notice by the contracting entity.

23. Any other relevant information.

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B. Restricted Procedures.

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

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

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

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

6. For supplies and works:

(a) The nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);

(b) Indication of whether the suppliers may tender for some and, or all the products required.

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

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

7. For services:

(a) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

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(b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference to the law, regulation or administrative provision;

(d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

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

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

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

11. (a) Final date for receipt of requests to participate;

(b) Address to which they shall be sent;

(c) Language or languages in which they shall be drawn up.

12. Final date for dispatch of invitations to tender.

13. Where applicable, any deposits and guarantees required.

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

15. Information concerning the economic operator’s position and the minimum economic and technical conditions required of him.

16. Criteria referred to in regulation 170 be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to tender.

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

18. Where appropriate, the date(s) and reference(s) to publication in the

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Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

20. Date of dispatch of the notice by the contracting entities.

21. Any other relevant information.

C. Negotiated Procedures

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

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

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

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

6. For supplies and works:

(a) The nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);

(b) Indication of whether the suppliers may tender for some and, or all the products required.

If, for works contracts, the work or the contract is subdivided into

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several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

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

7. For services:

(a) The nature and quantity of the services to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference of the law, regulation or administrative provision;

(d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

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

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

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

11. (a) Final date for receipt of requests to participate;

(b) Address to which they shall be sent;

(c) Language or languages in which they shall be drawn up.

12. Where appropriate, any deposits and guarantees required.

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

14. Information concerning the economic operator’s position and the

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minimum economic and technical conditions required of him.

15. Criteria referred to in regulation 170 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to negotiate.

16. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.

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

18. Where appropriate, the dates and reference(s) of publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

20. Date of dispatch of the notice by the contracting entity.

21. Any other relevant information.

Schedule 12
Information to be included in the Contract Award Notice
(Regulation 65)

I. Information for publication in the Official Journal of the European Union

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

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

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

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

(b) Date(s) and reference(s) of publication of the notice in the Official Journal of the European Union;

(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of regulations 125 to 127.

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

7. Number of tenders received, specifying:

(a) number of tenders received from economic operators which are SMEs,

(b) number of tenders received from abroad,

(c) number of tenders received electronically.

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

8. Date of the conclusion of the contract(s) or of the framework agreement(s) following the decision to award or conclude it/them.

9. Price paid for bargain purchases pursuant to regulation 127(g).

10. For each award, name, address including NUTS code, telephone, fax number, e-mail address and internet address of the successful tenderer(s) including:

(a) information whether the successful tenderer is an SME,

(b) information whether the contract was awarded to a consortium.

11. State, where appropriate, whether the contract has been, or may be, subcontracted.

12. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.

13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be

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obtained.

14. Optional information:

- value and share of the contract which has been or may be subcontracted to third parties,

- award criteria.

II. Information not intended for publication

15. Number of contracts awarded (where an award has been split between several suppliers).

16. Value of each contract awarded.

17. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).

18. Which award criteria were used?

19. Was the contract awarded to a tenderer who submitted a variant, in accordance with regulations 175(1) to (3)?

20. Were any tenders excluded on the grounds that they were abnormally low, in accordance with regulation 174.

21. Date of transmission of the notice by the contracting entity.

Schedule 13

Contents of the Invitations to Submit a Tender, Participate in the Dialogue, to Negotiate or to Confirm Interest
(Regulation 73)

1. The invitation to submit a tender, to participate in the dialogue or to negotiate provided for under regulation 73 must contain at least:

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

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

(b) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;

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(c) a reference to any published call for competition;

(d) an indication of any documents to be attached;

(e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;

(f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

2. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

(a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising those options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

(b) type of procedure: restricted or negotiated;

(c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

(d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;

(e) the address of the contracting entity;

(f) economic and technical conditions, financial guarantees and information required from economic operators;

(g) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of those; and

(h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

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Schedule 14

List of International Social and Environmental Conventions

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/ FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.

Schedule 15

Information to be included in Notices of Modifications of a Contract during its term
(Regulation 177(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

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3. CPV codes.

4. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.

5. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.

6. Where applicable, increase in price caused by the modification.

7. Description of the circumstances which have rendered necessary the modification.

8. Date of contract award decision.

9. Where applicable, the name, address including NUTS code, telephone, fax number, e-mail address and internet address of the new economic operator or operators.

10. Information whether the contract is related to a project and, or programme financed by Union funds.

11. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

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Schedule 16
Services
(Regulation 134)

CPV Code	Description
79611000-0; 75200000-8; 75231200-6; 75231240-8; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 85143000-3, 98133100-5, 98133000-4 and 98200000-5 and 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92342200-2; from 92360000-2 to 92700000-8; 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3[Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative, social, educational, healthcare and cultural services
75300000-9	Compulsory social security services provided that these services are not covered by these regulations where they are organised as non-economic services of general interest. A contracting authority is free to organise the provision of compulsory social services or of other services as services of general interest or as non-economic services of general interest.
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services.
98131000-0	Religious services

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CPV Code	Description
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service]. 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5	Legal services, to the extent not excluded pursuant to regulation 18(1)(c) to (g), 21(c)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to regulation 18(1)
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal Services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services

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Schedule 17
Information to be included in Notices concerning Contracts
for Social and Other Specific Services
(Regulation 135)

Part A Contract notice

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, CPV codes.

4. NUTS code for the main place of performance of the services.

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

6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.

7. Time limit(s) for contacting the contracting entity in view of participation.

8. Any other relevant information.

Part B Periodic indicative notice

1. Name, identification number (where provided for in national legislation), address including NUTS code, e-mail and internet address of the contracting entity.

2. Brief description of the contract in question including CPV codes.

3. As far as already known:

(a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,

(b) time-frame for delivery or provision of supplies, works or

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services and duration of the contract,

(c) conditions for participation, including:

(i) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,

(ii) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,

(d) brief description of the main features of the award procedure to be applied.

4. A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

Part C Notice on the existence of a qualification system

1. Name, identification number (where provided for in national legislation), address including NUTS code, e-mail and internet address of the contracting entity.

2. Brief description of the contract in question including CPV codes.

3. As far as already known:

(a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,

(b) time-frame for delivery or provision of supplies, works or services and duration of the contract,

(c) conditions for participation, including:

(i) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,

(ii) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,

(d) brief description of the main features of the award procedure to

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be applied.

4. A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

5. Period of validity of the qualification system and the formalities for its renewal.

Part D Contract award notice

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.

4. Reference of publication of the notice in the Official Journal of the European Union.

5. Number of tenders received.

6. Name and address of the chosen economic operator(s).

7. Any other relevant information.

Schedule 18
Information to be included in the Design Contest Notice
(Regulation 68(1)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. Project description (CPV codes).

4. Nature of the contest: open or restricted.

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5. In the case of open contests: final date for receipt of projects.

6. In the case of restricted contests:

(a) the number of participants envisaged, or range;

(b) where applicable, names of participants already selected;

(c) criteria for the selection of participants;

(d) final date for receipt of requests to participate.

7. Where applicable, indication of whether participation is reserved to a particular profession.

8. Criteria to be applied in the evaluation of projects.

9. Where applicable, names of the selected members of the jury.

10. Indication of whether the decision of the jury is binding on the authority.

11. Where applicable, number and value of prizes.

12. Where applicable, details of payments to all participants.

13. Indication of whether the prize-winners are permitted any follow-up contracts.

14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

15. Date of dispatch of the notice.

16. Any other relevant information.

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Schedule 19

Information to be included in the Results of Design Contest Notices

(Regulation 68(1)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. Project description (CPV codes).

4. Total number of participants.

5. Number of foreign participants.

6. Winner(s) of the contest.

7. Where applicable, the prize(s).

8. Other information.

9. Reference of the design contest notice.

10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

11. Date of dispatch of the notice.

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