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Subject:	Annexes to the proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast)

Delegations will find attached document COM(2022) 223 final - ANNEXES 1 to 2.

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Brussels, 16.5.2022
COM(2022) 223 final

ANNEXES 1 to 2

ANNEXES

to the

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the financial rules applicable to the general budget of the Union (recast)

↓ 2018/1046 (adapted)
⇨ new

ANNEX I

CHAPTER 1

Common provisions

SECTION 1

Framework contracts and publicity

1. Framework contracts and specific contracts

1.1. The duration of a framework contract shall not exceed four years, save in exceptional cases duly justified in particular by the subject matter of the framework contract.

Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract.

When concluding specific contracts, the parties shall not substantially deviate from the framework contract.

1.2. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded ⇨ or modified ⇦ within the limits of the terms laid down in the framework contract.

In such circumstances and where duly justified, contracting authorities may request the contractor in writing to supplement its tender if necessary.

1.3. Where a framework contract is to be concluded with several economic operators ('multiple framework contract'), it may take the form of separate contracts signed in identical terms with each contractor.

Specific contracts based on multiple framework contracts shall be implemented in one of the following ways:

(a) in accordance with the terms of the framework contract: without reopening of competition, where it sets out all the terms governing the provision of the works, supplies or services concerned and the objective conditions for determining which of the contractors shall perform them;

(b) where not all the terms governing the provision of the works, supplies or services concerned are laid down in the framework contract: through reopening of competition among the contractors, in accordance with point 1.4 and on the basis of any of the following:

(i) the same terms, where necessary more precisely formulated;

(ii) where appropriate, on the basis of other terms referred to in the procurement documents relating to the framework contract.

(c) partly without reopening of competition in accordance with point (a) and partly with reopening of competition amongst the contractors in accordance with point (b), where that possibility has been stipulated by the contracting authority in the procurement documents relating to the framework contract.

The procurement documents referred to in point (c) of the second subparagraph shall also specify which terms may be subject to reopening of competition.

1.4. A multiple framework contract with reopening of competition shall be concluded with at least three economic operators, provided that there is a sufficient number of admissible tenders as referred to in point 29.3.

When awarding a specific contract through reopening of competition among the contractors, the contracting authority shall consult them in writing and fix a time limit which is sufficiently long to allow specific tenders to be submitted. Specific tenders shall be submitted in writing. The contracting authority shall award each specific contract to the tenderer who has submitted the most economically advantageous specific tender on the basis of the award criteria set out in the procurement documents relating to the framework contract.

1.5. In sectors subject to a rapid price and technological evolution, framework contracts without reopening of competition shall contain a clause either on a mid-term review or on a benchmarking system. After the mid-term review, if the conditions initially laid down are no longer adapted to the price or technological evolution, the contracting authority shall not use the framework contract concerned and shall take appropriate measures to terminate it.

1.6. Specific contracts based on framework contracts shall be preceded by a budgetary commitment.

2. Advertising of procedures for contracts with a value equal to or greater than the thresholds referred to in Article 179~~175~~(1) of this Regulation or for contracts falling within the scope of Directive 2014/24/EU

2.1. The notices for publication in the *Official Journal of the European Union* shall include all the information set out in the relevant standard forms referred to in Directive 2014/24/EU to ensure transparency of the procedure.

2.2. The contracting authority may make known its intentions of planned procurement for the financial year through the publication of a prior information notice. It shall cover a period equal to or less than 12 months from the date on which the notice is sent to the Publications Office of the European Union (the Publications Office).

The contracting authority may publish the prior information notice either in the *Official Journal of the European Union* or on its buyer profile. In the latter case, a notice of publication on the buyer profile shall be published in the *Official Journal of the European Union*.

2.3. The contracting authority shall send to the Publications Office an award notice on the results of the procedure no later than 30 days after the signature of a contract or framework contract with a value equal to or greater than the thresholds referred to in Article 179~~175~~(1).

Notwithstanding the first subparagraph, award notices relating to contracts based on a dynamic purchasing system may be grouped together on a quarterly basis. In such cases, the contracting authority shall send the award notice no later than 30 days after the end of each quarter.

Award notices shall not be published for specific contracts based on a framework contract.

2.4. The contracting authority shall publish an award notice:

(a) before concluding a contract or a framework contract with a value equal to or greater than the thresholds referred to in Article 179~~175~~(1) and awarded in accordance with point (b) of the second subparagraph of point 11.1;

(b) after concluding a contract or a framework contract with a value equal to or greater than the thresholds referred to in Article 179~~175~~(1), including contracts awarded in accordance with point (a), ~~and~~ points (c) to (f) ⇨ and point (m) ⇦ of the second subparagraph of point 11.1.

2.5. The contracting authority shall publish in the *Official Journal of the European Union* a notice of modification of contract during its duration in the cases set out in points (a) and (b) of the first subparagraph of Article 176~~172~~(3) where the value of the modification is equal to or greater than the thresholds referred to in Article 179~~175~~(1) or is equal to or greater than the thresholds set out in Article 182~~178~~(1) for procedures in the field of external actions.

2.6. For an interinstitutional procedure, the contracting authority responsible for the procedure shall be in charge of the applicable publicity measures.

3. Advertising of procedures for contracts with a value below the thresholds referred to in Article 179~~175~~(1) of this Regulation or for contracts outside the scope of Directive 2014/24/EU

3.1. Procedures with an estimated contract value below the thresholds referred to in Article 179~~175~~(1) shall be advertised by appropriate means. Such advertising shall involve appropriate *ex ante* publicity on the internet or a contract notice or, for contracts awarded in accordance with the procedure set out in point 13, the publication of a notice for a call for expression of interest in the *Official Journal of the European Union*. That obligation shall not apply to the procedure set out in point 11 and the negotiated procedure for very low value contracts set out in point 14.4.

3.2. For contracts awarded in accordance with points (g) and (i) of the second subparagraph of point 11.1, the contracting authority shall send a list of contracts to the European Parliament and Council no later than 30 June of the following financial year. Where the contracting authority is the Commission, that list shall be annexed to the summary of the annual activity report referred to in Article 74(9).

3.3. Contract award information shall contain the name of the contractor, the amount legally committed and the subject matter of the contract and, in the case of direct contracts and specific contracts, it shall comply with Article 38(3).

The contracting authority shall publish a list of contracts on its website no later than 30 June of the following financial year for:

(a) contracts below the thresholds referred to in Article 179~~175~~(1);

(b) contracts awarded in accordance with point (h) and points (j) to (m) of the second subparagraph of point 11.1;

(c) modifications of contracts as set out in point (c) of the first subparagraph of Article 176~~172~~(3);

(d) modifications of contracts as set out in points (a) and (b) of the first subparagraph of Article 176~~172~~(3) where the value of the modification is below the thresholds referred to in Article 179~~175~~(1);

(e) specific contracts under a framework contract.

For the purposes of point (e) of the second subparagraph, the published information may be aggregated per contractor for specific contracts under the same framework contract.

3.4. For interinstitutional framework contracts, each contracting authority shall be responsible for advertising its specific contracts and their modifications in accordance with point 3.3.

4. Publication of notices

4.1. The contracting authority shall draw up and transmit the notices referred to in points 2 and 3 by electronic means to the Publications Office.

4.2. The Publications Office shall publish the notices referred to in points 2 and 3 in the *Official Journal of the European Union* no later than:

(a) seven days after their dispatch if the contracting authority uses the electronic system for filling out the standard forms referred to in point 2.1 and limits free text to 500 words;

(b) 12 days after their dispatch in all other cases.

4.3. The contracting authority shall be able to provide evidence of the date of dispatch.

5. Other forms of advertising

In addition to the advertising provided for in points 2 and 3 procurement procedures may be advertised in any other way, in particular in electronic form. Any such advertising shall refer to the notice published in the *Official Journal of the European Union*, if the notice has been published, and shall not precede the publication of that notice, which alone is authentic.

Such advertising shall not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the contract notice, if the notice has been published.

SECTION 2

Procurement procedures

6. Minimum number of candidates and arrangements for negotiation

6.1. In a restricted procedure and in the procedures referred to in points (a) and (b) of point 13.1 and for contracts awarded in accordance with point 14.2, the minimum number of candidates shall be five.

6.2. In a competitive procedure with negotiation, a competitive dialogue, an innovation partnership~~, a prospection of the local market in accordance with point (g) of the second subparagraph of point 11.1~~ and a negotiated procedure for low value contracts in accordance with point 14.3, the minimum number of candidates shall be three.

6.3. Points 6.1 and 6.2 shall not apply in the following cases:

(a) negotiated procedures for very low value contracts in accordance with point 14.4;

(b) negotiated procedures without prior publication in accordance with point 11, except for design contests in accordance with point (d) of the second subparagraph of point 11.1 ~~and prospections of the local market in accordance with point (g) of the second subparagraph of point 11.1~~.

6.4. Where the number of candidates meeting the selection criteria is below the minimum number specified in points 6.1 and 6.2, the contracting authority may continue the procedure by inviting ⇨ to tender ⇦ the candidates with the required capacities. The contracting authority shall not include other economic operators that did not initially request to participate or that it did not initially invite.

6.5. During a negotiation, the contracting authority shall ensure equal treatment for all tenderers.

A negotiation 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 procurement documents. The contracting authority shall indicate whether it will use that option in the procurement documents.

6.6. For contracts awarded in accordance with point~~s~~ (d) ~~and (g)~~ of the second subparagraph of point 11.1 and points 14.2 and 14.3, the contracting authority shall invite at least all economic operators who have expressed interest following *ex ante* publicity as set out in point 3.1 ~~or prospection of the local market~~ or a design contest.

7. Innovation partnership

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

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

Based on those intermediate targets, the contracting authority 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 authority has indicated those possibilities and the conditions for their use in the procurement documents.

7.2. Before launching an innovation partnership, the contracting authority shall consult the market as provided for in point 15 in order to ascertain that the work, supply or service does not exist on the market or as near-to-market development activity.

The arrangements on negotiation set out in Article 168~~164~~(4) and in point 6.5 shall be complied with.

In the procurement documents, the contracting authority shall describe the need for innovative works, supplies or services that cannot be met by purchasing works, supplies or services already available on the market. It shall indicate which elements of that description define the minimum requirements. 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.

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

The contracts shall be awarded on the sole basis of the best price-quality ratio as set out in Article 171~~167~~(4).

7.3. In the procurement documents, the contracting authority shall specify the arrangements applicable to intellectual property rights.

In the framework of the innovation partnership, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without its agreement.

The contracting authority 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 works, supplies or services shall be proportionate in relation to the investment required for their development.

8. Design contests

8.1. Design contests shall be subject to the rules on advertising set out in point 2 and may include the award of prizes.

Where design contests are restricted to a limited number of candidates, the contracting authority shall lay down clear and non-discriminatory selection criteria.

The number of candidates invited to participate shall be sufficient to ensure genuine competition.

8.2. The jury shall be appointed by the authorising officer responsible. It shall be composed exclusively of natural persons who are independent of candidates in the contest. Where a particular professional qualification is required from candidates in a contest, at least one third of the members of the jury shall have the same or an equivalent qualification.

The jury shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

8.3. The proposals of the jury, based on the merits of each project, and its ranking and remarks, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the jury has given its opinion.

Candidates may be asked by the jury to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.

8.4. The contracting authority shall take an award decision that includes the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if the choice departs from the proposals made in the jury's opinion.

9. Dynamic purchasing system

9.1. A dynamic purchasing system may be divided into categories of works, supplies or services that are objectively defined on the basis of characteristics of the procurement to be undertaken in the category concerned. In that case, selection criteria shall be defined for each category.

9.2. The contracting authority shall indicate in the procurement documents the nature and estimated quantity of the purchases envisaged and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

9.3. The contracting authority shall give any economic operator, throughout the period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system. It shall complete its evaluation of such requests within 10 working days of their receipt~~.~~ ~~That deadline may be prolonged to 15 working days where justified.~~ ~~However~~, ~~the contracting authority may~~ ⌦ but can ⌫ extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform the candidate as soon as possible of whether or not it has been admitted to the dynamic purchasing system.

9.4. The contracting authority shall invite all ⌦ admitted ⌫ candidates ~~admitted to the system in the relevant category~~ to submit a tender ~~within a reasonable time~~. ⇨ Where the dynamic purchasing system has been divided into categories of works, products or services, the contracting authority shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender. ⇦

The contracting authority shall award the contract to the tenderer who has submitted the most economically advantageous tender on the basis of the award criteria set out in the contract notice. Those criteria may, if appropriate, be formulated more precisely in the ⇨ procurement documents ⇦ ~~invitation to tender~~.

9.5. The contracting authority shall indicate the period of validity of the dynamic purchasing system in the contract notice.

~~A dynamic purchasing system shall not last for more than four years, except in duly justified exceptional cases.~~

The contracting authority shall not resort to such a system to prevent, restrict or distort competition.

10. Competitive dialogue

10.1. The contracting authority shall specify its needs and requirements, the award criteria and an indicative timeframe in the contract notice or in a descriptive document.

It shall award the contract to the tender offering the best price-quality ratio.

10.2. The contracting authority shall open a dialogue with the candidates satisfying the selection criteria in order to identify and define the means best suited to satisfying its needs. It may discuss all aspects of the procurement with the selected candidates during that dialogue but it cannot alter its needs and requirements and award criteria as provided for in point 10.1.

During the course of the dialogue, the contracting authority shall ensure equality of treatment among all tenderers and shall not reveal the solutions proposed or other confidential information communicated by a tenderer without its agreement to waive that confidentiality.

The competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed by applying the announced award criteria if provision is made for that possibility in the contract notice or the descriptive document.

10.3. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

After informing the remaining tenderers that the dialogue is concluded, the contracting authority 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.

At the request of the contracting authority, those final tenders may be clarified, specified and optimised provided this does not involve substantial changes to the tender or to the procurement documents.

The contracting authority may negotiate with the tenderer having submitted the tender offering the best price-quality ratio to confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender and does not risk distorting competition or causing discrimination.

10.4. The contracting authority may specify the payments to be made to the selected candidates taking part in the dialogue.

11. Use of a negotiated procedure without prior publication of a contract notice

11.1. Where the contracting authority uses the negotiated procedure without prior publication of a contract notice, it shall comply with the arrangements on negotiation set out in Article 168~~164~~(4) and in point 6.5.

The contracting authority may use the negotiated procedure without prior publication of a contract notice, regardless of the estimated value of the contract, in the following cases:

(a) where no tenders, or no suitable tender, or no request to participate or no suitable request to participate as provided for in point 11.2 have been submitted in response to:

(i) an open procedure; ~~or~~

(ii) ⌦ a ⌫ restricted procedure;

⇩ new

(iii) a competitive procedure with negotiation where a contract notice is published

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🡻 2018/1046

after that procedure has been completed, provided that the original procurement documents are not substantially altered;

(b) where the works, supplies or services can only be provided by a single economic operator under the conditions set out in point 11.3 and for any of the following reasons:

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

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights, must be ensured;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the time limits laid down in points 24, 26 and 42~~41~~ and where the justification of such extreme urgency is not attributable to the contracting authority.

⇩ new

Following a crisis declaration referred to Article 164(6), the authorising officers responsible may only rely on such crisis declaration if the specific procurement procedure is justified by a situation of extreme urgency that is resulting from the crisis.

↓ 2018/1046

(d) where a service contract follows a design contest and is to be awarded to the winner or to one of the winners; in the latter case, all winners shall be invited to participate in the negotiations;

(e) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that those services or works are in conformity with a basic project for which the original contract was awarded after publication of a contract notice, subject to the conditions set out in point 11.4;

(f) for supply contracts:

(i) for additional deliveries which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; when Union institutions award contracts on their own account, the duration of such contracts shall not exceed three years;

(ii) where the products are manufactured purely for the purpose of research, experimentation, study or development; however, such contracts shall not include quantity production to establish commercial viability or to recover research and development costs;

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

(iv) for purchases of supplies on particularly advantageous terms, from either an economic operator which is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law;

⇩ new

(v) for the purchase of medicines for human use or medical countermeasures as well as for products allowing the eradication or containment of certain animal diseases, zoonoses and quarantine pests of plants, provided that one of the following conditions is fulfilled: these products are innovative, not readily available on the market or there is a need to adopt a readily available solution.

↓ 2018/1046
⇨ new

(g) for building contracts, after prospecting the local market;

(h) for contracts for any of the following:

(i) legal representation by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC[1] in arbitration or conciliation or judicial proceedings;

(ii) legal advice given in the preparation of the proceedings referred to in point (i), or where there is 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;

(iii) arbitration and conciliation services;

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

(i) for contracts declared to be secret or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so requires, provided the essential interests concerned cannot be guaranteed by other measures; such measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure;

~~(j) for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council[2], central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;~~

(j~~k~~) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU;

(k~~l~~) for the purchase of public communication networks and electronic communications services within the meaning of Directive ~~2002/21/EC~~ (EU) 2018/1972 of the European Parliament and of the Council[3];

(l~~m~~) services provided by an international organisation ⇨ referred to in Article 160, paragraph 1, or a Member State organisation, ⇦ where it cannot participate in competitive procedures according to its statute or act of establishment;~~.~~

⇩ new

(m) where it has been decided to open a new Union delegation in a third country or reopen a delegation following a temporary closure, for all contracts awarded by the Union

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1 Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

2 ~~Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).~~

3 Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

delegations or awarded exclusively in the interest of these Union delegations, during the first year following the date of such a decision.

↓ 2018/1046 (adapted)
⇨ new

11.2. A tender shall be considered unsuitable where it does not relate to the subject matter of the contract. ⇨ A tender or ⇦ ~~and~~ a request to participate shall be considered unsuitable where the ~~economic operator~~ ⇨ participant does not have access to procurement referred to in Articles 180,181 and 183, ⇦ is in an exclusion situation referred to in Article 139~~136~~(1) or does not meet the selection criteria.

11.3. The exceptions set out in points (b)(ii) and (iii) of the second subparagraph of point 11.1 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 when defining the procurement.

11.4. In the cases referred to in point (e) of the second subparagraph of point 11.1, the basic project shall indicate the extent of possible new services or works and the conditions under which they will be awarded. As soon as the basic project is put up for tender, the possible use of the negotiated procedure shall be disclosed, and the total estimated amount for the subsequent services or works shall be taken into consideration in applying the thresholds referred to in Article 179~~175~~(1), or in Article 182~~178~~(1) in the field of external actions. When Union institutions award contracts on their own account, that procedure shall only be used during the performance of the original contract and at the latest during the three years following its conclusion.

12. Use of a competitive procedure with negotiation or competitive dialogue

12.1. When the contracting authority uses the competitive procedure with negotiation or the competitive dialogue, it shall follow the arrangements on negotiation set out in Article 168~~164~~(4) and in point 6.5. The contracting authority may use those procedures, regardless of the estimated value of the contract, in the following cases:

(a) where only irregular or unacceptable tenders as specified in points 12.2 and 12.3 have been submitted in response to an open or restricted procedure after that procedure has been completed provided that the original procurement documents are not substantially altered;

(b) with regard to works, supplies or services fulfilling one or more of the following criteria:

(i) where the needs of the contracting authority cannot be met without the adaptation of a readily available solution;

(ii) the works, supplies or services include design or innovative solutions;

(iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, complexity or the legal and financial make-up of the contract or the risks attached to the subject matter of the contract;

(iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, as set out in point 17.4~~3~~;

(c) for concession contracts;

(d) for the service contracts referred to in Annex XIV to Directive 2014/24/EU;

(e) for research and development services other than those covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 as set out in Regulation (EC) No 2195/2002 unless the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, or unless the service provided is wholly remunerated by the contracting authority;

(f) for service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual media services as defined in Directive 2010/13/EU of the European Parliament and of the Council[4] or radio media services or contracts for broadcasting time or programme provision.

12.2. A tender shall be considered irregular in any of the following cases:

(a) when it does not comply with the minimum requirements specified in the procurement documents;

(b) when it does not comply with the requirements for submission set out in Article 172~~168~~(3);

(c) when the tenderer is rejected under point (b) or (c) of the first subparagraph of Article 144~~141~~(1);

(d) when the contracting authority has declared the tender to be abnormally low.

12.3. A tender shall be considered unacceptable in any of the following cases:

(a) when the price of the tender exceeds the contracting authority's maximum budget as determined and documented prior to the launching of the procurement procedure;

(b) when the tender fails to meet the minimum quality levels for award criteria.

12.4. In the cases referred to in point (a) of point 12.1, the contracting authority shall not be required to publish a contract notice if it includes in the competitive procedure with negotiation all those tenderers who satisfied the exclusion and selection criteria except those who submitted a tender declared to be abnormally low.

13. Procedure involving a call for expression of interest

13.1. For contracts with a value below the thresholds referred to in Article 179~~175~~(1) or in Article 182~~178~~(1), and without prejudice to points 11 and 12, the contracting authority may use a call for expression of interest to do either of the following:

(a) to pre-select candidates to be invited to submit tenders in response to future restricted invitations to tender;

(b) to collect a list of vendors to be invited to submit requests to participate or tenders.

13.2. The list drawn up following a call for expression of interest shall be valid for not more than four years from the date on which the notice referred to in point 3.1 is published.

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[4] 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 (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

The list referred to in the first subparagraph may include sub-lists.

Any interested economic operator may express interest at any time during the period of validity of the list, with the exception of the last three months of that period.

13.3. Where a contract is to be awarded, the contracting authority shall invite all candidates or vendors entered on the relevant list or sub-list to do either of the following:

(a) to submit a tender in the case referred to in point (a) of point 13.1;

(b) to submit, in case referred to in point (b) of point 13.1, either of the following:

(i) tenders including documents relating to exclusion and selection criteria;

(ii) documents relating to exclusion and selection criteria and, as a second step, tenders, for those fulfilling those criteria.

14. Middle, low and very low value contracts

14.1. Middle, low and very low value contracts may be awarded by negotiated procedure in accordance with the arrangements on negotiation set out in Article 168~~164~~(4) and in point 6.5. Only candidates invited simultaneously and in writing by the contracting authority shall submit an initial tender.

14.2. A contract of a value exceeding EUR 60 000 and below the thresholds referred to in Article 179~~175~~(1) shall be deemed of middle value. ⇨ For contracts awarded by Union delegations or exclusively in the interest of Union delegations in third countries a contract of a value exceeding EUR 100 000 and below EUR 300 000 shall be deemed of middle value. ⇦ Points 3.1, 6.1 and 6.4 shall apply to such contracts.

14.3. A contract of a value not exceeding EUR 60 000 ⇨ , or EUR 100 000 for contracts awarded by Union delegations or exclusively in the interest of Union delegations in third countries, ⇦ but exceeding the thresholds set out in point 14.4, shall be deemed of low value. Points 3.1, 6.2 and 6.4 shall apply to such contracts.

14.4. A contract of a value not exceeding EUR 15000 shall be deemed of very low value. Point 6.3 shall apply to such contracts.

14.5. Payments of amounts not exceeding EUR 1 000 ⇨ , or EUR 20 000 for Union delegations in third countries, ⇦ in respect of items of expenditure may be carried out simply as payment against invoices, without prior acceptance of a tender.

15. Preliminary market consultation

15.1. For preliminary market consultation, the contracting authority may seek or accept advice from independent experts or authorities or from economic operators. 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.

15.2. Where an economic operator has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures as set out in Article 144~~141~~ to ensure that competition is not distorted by the participation of that economic operator in the award procedure.

16. Procurement documents

16.1. The procurement documents shall include the following:

(a) if applicable, the contract notice or other advertising measure as provided for in points 2 to 5;

(b) the invitation to tender;

(c) the tender specifications or the descriptive documents in the case of a competitive dialogue, including the technical specifications and the relevant criteria;

(d) the draft contract based on the model contract.

Point (d) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

16.2. The invitation to tender shall:

(a) specify the rules governing the submission of tenders, including in particular the conditions to maintain them confidential until opening, the closing date and time for receipt and the address to which they are to be sent or delivered or the internet address in case of electronic submission;

(b) state that submission of a tender implies acceptance of the terms and conditions set out in the procurement documents and that such submission binds the contractor to whom the contract is awarded during performance of the contract;

(c) specify the period during which a tender will remain valid and shall not be modified in any respect;

(d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 173~~169~~, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;

(e) specify the means of proof for compliance with the time limit for receipt of tenders;

(f) state that submission of a tender implies acceptance of receiving notification of the outcome of the procedure by electronic means.

16.3. The tender specifications shall contain the following:

(a) the exclusion and selection criteria;

(b) the award criteria and their relative weighting or, where weighting is not possible for objective reasons, their decreasing order of importance, which shall also apply to variants if they are authorised in the contract notice;

(c) the technical specifications referred to in point 17;

(d) if variants are authorised, the minimum requirements which they must meet;

(e) information whether the Protocol No 7 on the privileges and immunities of the European Union, annexed to the TEU and the TFEU, or, where appropriate, the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations applies;

~~(f) the evidence of access to procurement;~~

(f~~e~~) the requirement to indicate in which country the tenderers are established and to present ⇨ , when requested, ⇦ the supporting evidence normally acceptable under the law of that country;

(g~~h~~) in the case of a dynamic purchasing system or electronic catalogues, information on the electronic equipment used and the technical connection arrangements and specifications needed.

16.4. The draft contract shall:

(a) specify the liquidated damages for failure to comply with its clauses;

(b) specify the details which must be contained in invoices and in the relevant supporting documents in accordance with Article 112~~111~~;

(c) state that, when Union institutions award contracts on their own account, the law which applies to the contract is Union law complemented, where necessary, by a national law or, if necessary for building contracts, exclusively national law;

(d) specify the competent court for hearing disputes;

(e) specify that the contractor shall 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 social and environmental conventions listed in Annex X to Directive 2014/24/EU;

(f) specify whether the transfer of intellectual property rights will be required;

(g) state that the price quoted in the tender is firm and non-revisable, or lay down the conditions or formulas for revision of prices during the lifetime of the contract.

For the purposes of point (g) of the first subparagraph, if a revision of prices is set out in the contract, the contracting authority shall take particular account of:

(a) the subject matter of the procurement and the economic situation in which it is taking place;

(b) the type of contract and tasks and its duration;

(c) the financial interests of the contracting authority.

Points (c) and (d) of the first subparagraph of this point may be waived for contracts signed in accordance with point (m) of the second subparagraph of point 11.1.

17. Technical specifications

17.1. Technical specifications shall allow equal access of economic operators to the procurement procedures and not have the effect of creating unjustified obstacles to the opening up of procurement to competition.

Technical specifications shall include the characteristics required for works, supplies or services, including minimum requirements, so that they fulfil the use for which they are intended by the contracting authority.

17.2. The characteristics referred to in point 17.1 may include as appropriate:

(a) the quality levels;

(b) environmental performance and climate performance;

~~(c) for purchases intended for use by natural persons, the accessibility criteria for people with disabilities or the design for all users, except in duly justified cases;~~

(c~~d~~) the levels and procedures of conformity assessment;

(d~~e~~) performance or use of the supply;

(e~~f~~) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods;

(f~~e~~) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority is in a position to prescribe under general or specific regulations in relation to the finished works and to the materials or parts which they involve.

⇩ new

17.3. The technical specifications shall be formulated to include for all purchases intended for use by natural persons, accessibility criteria for persons with disabilities or the design for all users, except in duly justified cases;

(a) 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. In particular as regards the products and services referred to in Article 2 of Directive 2019/882, the accessibility requirements set in Annex I of Directive 2019/882 shall constitute mandatory accessibility requirements within the meaning of the previous paragraphs.

(b) Any product or service, the features, elements or functions of which comply with the accessibility requirements set out in Annex I to Directive 2019/882 shall be presumed to fulfil the relevant obligations set out in this Regulation as regards accessibility, for those features, elements or functions, unless otherwise provided in this Regulation.

⇩ 2018/1046
⇨ new

17.~~4~~3. The technical specifications shall be formulated in any of the following ways:

(a) in order of preference, by reference to European standards, European technical assessments, common technical specifications, international standards, other technical reference systems established by European standardisation bodies or, failing this, their national equivalents; every reference shall be accompanied by the words ‘or equivalent’;

(b) in terms of performance or of 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 the contracting authority to award the contract;

(c) by a combination of the methods set out in points (a) and (b).

17.~~5~~4. Where the contracting authority uses the option of referring to the specifications provided for in point (a) of point 17.~~4~~3, it shall not reject a tender on the grounds that it does not comply with those specifications once the tenderer proves, by any appropriate means, that the solution proposed satisfies, in an equivalent manner, the requirements defined in the technical specifications.

17.6~~5~~. Where the contracting authority uses the option provided for in point (b) of point 17.4~~3~~to formulate technical specifications in terms of performance or of functional requirements, it shall not reject a tender which complies with a national standard transposing a European standard, a European technical approval, a common technical specifications, an international standard or technical reference systems established by a European standardisation body, if those specifications address the performance or functional requirements which it has laid down.

The tenderer shall prove by any appropriate means that the work, supply or service in compliance with the standard meets the performance or functional requirements set out by the contracting authority.

17.7~~6~~. Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics, it may require a specific label or specific requirements from a label, provided that all of the following conditions are satisfied:

(a) the label requirements only concern criteria which are linked to the subject matter of the contract and are appropriate to define the characteristics of the purchase;

(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 the relevant stakeholders may participate;

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

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

The contracting authority may require that economic operators provide a test report or a certificate as means of proof of conformity with the procurement documents from a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council[5] or an equivalent conformity assessment body.

17.8~~7~~. The contracting authority shall accept any other appropriate means of proof than those referred to in point 17.7~~6~~, such as a technical dossier from the manufacturer, where the economic operator had no access to the certificates or test reports, or no possibility of obtaining them or obtaining a specific label within the relevant time limits, for reasons that are not attributable to that economic operator and provided that the economic operator concerned proves that the works, supplies or services to be provided fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

17.9~~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 products or economic operators.

Such reference shall be permitted on an exceptional basis where a sufficiently detailed and intelligible description of the subject matter of the contract is not possible. Such reference shall be accompanied by the words ‘or equivalent’.

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5 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 and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

18. Exclusion and selection criteria

18.1. For the purpose of Article 140~~137~~, the contracting authority shall accept the European Single Procurement Document (ESPD) referred to in Directive 2014/24/EU, or, failing that, a declaration on honour signed and dated.

An economic operator may reuse an ESPD ⇨ , or a declaration on honour signed and dated, ⇦ which has already been used in a previous procedure, provided that the economic operator confirms that the information contained therein continues to be correct.

⇩ new

The presumed successful tenderer shall provide, within a time limit set by the contracting authority and preceding the award of the contract, the evidence that it is not in one of the exclusion situations referred to in Article 139(1), confirming the ESPD or the declaration on honour in the following cases:

(a) for contracts awarded by the institutions, with a value equal to or greater than the thresholds referred to in Article 179(1);

(b) by exception to point (a), for contracts in the field of external action with a value equal to or greater than the thresholds laid down in point 39.2(a) and for contracts awarded by the Union delegations or in the interest of the Union delegations in third countries with a value equal to or greater than EUR 300 000.

By way of derogation from the third subparagraph, in a situation of extreme urgency resulting from a crisis, the contracting authority may require the presumed successful tenderer to provide, within a reasonable time limit after the contract award decision but before the contract signature, the evidence referred to in the third subparagraph, subject to the conditions set out in Article 164(6).

🡻 2018/1046
⇨ new

18.2. The contracting authority shall indicate in the procurement documents the selection criteria, the minimum levels of capacity and the evidence required to prove that capacity. All requirements shall be related and proportionate to the subject matter of the contract.

The contracting authority shall specify in the procurement documents how groups of economic operators are to meet the selection criteria taking into account point 18.6.

Where a contract is divided into lots, the contracting authority may set minimum levels of capacity for each lot. It may set additional minimum levels of capacity in the event that several lots are awarded to the same contractor.

18.3. With regard to capacity to pursue the professional activity, the contracting authority may require an economic operator to fulfil at least one of the following conditions:

(a) be enrolled in a relevant professional or trade register, except when the economic operator is an international organisation;

(b) for service contracts, hold a particular authorisation proving that it is authorised to perform the contract in its country of establishment or be a member of a specific professional organisation.

18.4. When receiving requests to participate or tenders, the contracting authority shall accept the ESPD or, failing that, a declaration on honour stating that the candidate or tenderer fulfils the selection criteria. The requirement to submit an ESPD or a declaration on honour may be waived for very low value contracts.

The contracting authority may ask tenderers and candidates at any moment during the procedure to submit an updated declaration or all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

The contracting authority shall ⇨ , as specified in the tender specifications, either ⇦ require the candidates or ~~successful~~ tenderers to submit up-to-date supporting documents ⇨ or require the presumed successful tenderer to submit up-to-date supporting documents before the award decision, ⇦ except where it has already received them for the purpose of another procedure and provided that the documents are still up-to-date or it can access them in a national database free of charge.

⇩ new

By way of derogation from the third subparagraph, in a situation of extreme urgency resulting from a crisis, the contracting authority may require the presumed successful tenderer to provide, within a reasonable time limit after the contract award decision but before the contract signature, the evidence referred to in point 18.4, subject to the conditions set out in Article 164(6).

The contracting authority shall require economic operators, and, where appropriate, entities on whose capacity the economic operator intends to rely, as well as envisaged subcontractors to sign a declaration on honour confirming the absence of professional conflicting interests and, at the request of the contracting authority, when needed to provide any relevant information.

⇩ 2018/1046 (adapted)
⇨ new

18.5. The contracting authority may, depending on its assessment of risks, decide not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators in the following cases:

(a) procedures for contracts awarded by Union institutions on their own account, with a value not exceeding the thresholds referred to in Article 179~~175~~(1);

(b) procedures for contracts awarded in the field of external actions, with a value not exceeding the thresholds referred to in Article 182~~178~~(1);

(c) procedures for contracts awarded in accordance with points (b), (e), (f)(i) and (iv), (h) and (m) of the second subparagraph of point 11.1.

Where the contracting authority decides not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators, no pre-financing shall be made except in duly justified cases.

18.6. 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. It shall in that case prove to the contracting authority that it will have at its disposal the

resources necessary for the performance of the contract by producing a commitment by those entities to that effect.

With regard to technical and professional criteria, an economic operator shall only rely on the capacities of other entities where the latter will perform the works or services for which those capacities are required.

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

The contracting authority may request information from the tenderer on any part of the contract that the tenderer intends to subcontract and on the identity of any subcontractors.

For works or services provided at a facility directly under the oversight of the contracting authority, the contracting authority shall require the contractor to indicate the names, contacts and authorised representatives of all subcontractors involved in the performance of the contract, including any changes of subcontractors.

18.7. The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely ⇨ , whether they are subcontractors or not, ⇦ ~~and the envisaged subcontractors, when subcontracting represents a significant part of the contract,~~ fulfil the relevant selection criteria.

The contracting authority shall require that the economic operator replaces an entity or subcontractor which does not meet a relevant selection criterion.

18.8. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, the contracting authority 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, a participant in the group.

18.9. The contracting authority shall not demand that a group of economic operators have a given legal form in order to submit a tender or request to participate, but the selected group may be required to adopt a given legal form after it has been awarded the contract if such change is necessary for the proper performance of the contract.

19. Economic and financial capacity

19.1. To ensure that economic operators possess the necessary economic and financial capacity to perform the contract, the contracting authority may require in particular that:

(a) economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract;

(b) economic operators provide information on their annual accounts showing ratios between assets and liability;

(c) economic operators provide an appropriate level of professional risk indemnity insurance.

For the purposes of point (a) of the first subparagraph, the minimum yearly turnover shall not exceed two times the estimated annual contract value, except in duly justified cases linked to the nature of the purchase, which the contracting authority shall explain in the procurement documents.

For the purposes of point (b) of the first subparagraph, the contracting authority shall explain the methods and criteria for such ratios in the procurement documents.

19.2. In the case of dynamic purchasing systems, the maximum yearly turnover shall be calculated on the basis of the expected maximum size of ~~specific~~ contracts to be awarded under that system.

19.3. The contracting authority shall define in the procurement documents the evidence to be provided by an economic operator to demonstrate its economic and financial capacity. It may request in particular one or more of the following documents:

(a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(b) financial statements or their extracts for a period equal to or less than the last three financial years for which accounts have been closed;

(c) a statement of the economic operator's overall turnover and, where appropriate, turnover in the area covered by the contract for a maximum of the last three financial years available.

If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial capacity by any other document which the contracting authority considers appropriate.

20. Technical and professional capacity

20.1. The contracting authority shall verify that candidates or tenderers fulfil the minimum selection criteria concerning technical and professional capacity in accordance with points 20.2 to 20.5. ⇨ The contracting authority shall also assess the existence of professional conflicting interests referred to in point 20.6 on the basis of a declaration of professional conflicting interests and, where relevant, the contracting authority's request for additional information under point 18.4. ⇦

20.2. The contracting authority shall define in the procurement documents the evidence to be provided by an economic operator to demonstrate its technical and professional capacity. It may request ⌦ , in particular, ⌫ one or more of the following documents:

(a) for works, supplies requiring siting or installation operations or services, information on the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance;

(b) a list of the following:

(i) the principal services provided and supplies delivered in the past three years, with the sums, dates and clients, public or private accompanied upon request by statements issued by the clients;

(ii) the works carried out in the last five years, accompanied by certificates of satisfactory execution for the most important works;

(c) a statement of the technical equipment, tools or the plant available to the economic operator for performing a service or works contract;

(d) a description of the technical facilities and means available to the economic operator for ensuring quality, and a description of available study and research facilities;

(e) a reference to the technicians or technical bodies available to the economic operator, whether or not belonging directly to it, especially those responsible for quality control;

(f) in respect of supplies: samples, descriptions or authentic photographs or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products clearly identified by references to technical specifications or standards;

(g) for works or services, a statement of the average annual manpower and the number of managerial staff of the economic operator for the last three years;

(h) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;

(i) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

For the purposes of point (b)(i) of the first subparagraph, where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account.

For the purposes of point (b)(ii) of the first subparagraph, where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant works delivered or performed more than five years before will be taken into account.

20.3. Where the supplies or services are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the economic operator is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

20.4. Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, including on accessibility for disabled persons, it shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. The contracting authority shall also accept other evidence of equivalent quality assurance measures from an economic operator that has demonstrably no access to such certificates or has no possibility of obtaining such certificates within the relevant time limits, for reasons that are not attributable to that economic operator and provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

20.5. Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, it shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council[6] or other environmental management standards based on the relevant European or international standards by accredited bodies. Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management measures, provided that the

[6] Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

economic operator proves that those measures are equivalent to those required under the applicable environmental management system or standard.

20.6. A contracting authority may conclude that an economic operator does not possess the required professional capacity to perform the contract to an appropriate quality standard where the contracting authority has established that the economic operator has ⇨ professional ⇦ conflicting interests which may negatively affect its performance.

21. Award criteria

21.1. Quality criteria may include elements such as technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of the life cycle of the works, supplies or services; ~~,~~ organisation ⇨ , qualification and experience ⇦ of ~~the~~ staff assigned to performing the contract, ⇨ where the quality of the staff assigned can have a significant impact on the level of the performance of the contract; ⇦ after-sales service, technical assistance or delivery conditions such as delivery date, delivery process and delivery period or period of completion.

21.2. The contracting authority shall specify in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender except when using the lowest price method. Those weightings may be expressed as a range with an appropriate maximum spread.

The weighting applied to price or cost in relation to the other criteria shall not result in the neutralisation of price or cost.

If weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

21.3. The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.

21.4. Life-cycle costing shall cover parts or all of the following costs, to the extent relevant, over the life cycle of works, supplies or services:

(a) costs, borne by the contracting authority 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 attributed to environmental externalities linked to the works, supplies or services during their life cycle, provided their monetary value can be determined and verified.

21.5. Where the contracting authority assesses the costs using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the tenderers and the method which it will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs attributed to environmental externalities shall fulfil the following conditions:

(a) it is based on objectively verifiable and non-discriminatory criteria;

(b) it is accessible to all interested parties;

(c) economic operators can provide the required data with reasonable effort.

Where applicable, the contracting authority shall use the mandatory common methods for the calculation of life-cycle costs provided for in Union legal acts listed in Annex XIII to Directive 2014/24/EU.

22. Use of electronic auctions

22.1. The contracting authority may use electronic auctions, in which new prices, revised downwards, or new values concerning certain elements of tenders are presented.

The contracting authority shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

22.2. In open, restricted or competitive procedures with negotiation, the contracting authority may decide that the award of a public contract is preceded by an electronic auction when the procurement documents can be established with precision.

An electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in point (b) of the second subparagraph of point 1.3 and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in point 9.

The electronic auction shall be based on one of the award methods set out in Article 171~~167~~(4).

22.3. The contracting authority which decides to hold an electronic auction shall state that fact in the contract notice.

The procurement documents shall include the following details:

(a) the values of the features which will be the subject of an electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject matter 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 including whether it includes phases and how it will be closed, as set out in point 22.7;

(e) the conditions under which the tenderers will be able to tender and, in particular, the minimum differences which will, where appropriate, be required when submitting the tender;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

22.4. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using the connections in accordance with the instructions. The invitation shall specify the date and time of the start of the electronic auction.

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.

22.5. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender.

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

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

22.6. Throughout each phase of an electronic auction the contracting authority shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It may also, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announce the number of tenderers in any specific phase of the auction. It shall not however disclose the identities of the tenderers during any phase of an electronic auction.

22.7. The contracting authority shall close an electronic auction in one or more of the following ways:

(a) at the previously indicated date and time;

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

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

22.8. After closing an electronic auction, the contracting authority shall award the contract on the basis of the results of the electronic auction.

23. Abnormally low tenders

23.1. If, for a given contract, the price or costs proposed in a tender appears to be abnormally low, the contracting authority shall request in writing details of the constituent elements of the price or costs which it considers relevant and shall give the tenderer the opportunity to present its observations.

The contracting authority may, in particular, take into consideration observations relating to:

(a) the economics of the manufacturing process, of the provision of services or of the construction method;

(b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;

(c) the originality of the tender;

(d) compliance of the tenderer with applicable obligations in the fields of environmental, social and labour law;

(e) compliance of subcontractors with applicable obligations in the fields of environmental, social and labour law;

(f) the possibility of the tenderer obtaining State aid in compliance with applicable rules.

23.2. The contracting authority shall only reject the tender where the evidence supplied does not satisfactorily account for the low price or costs proposed.

The contracting authority shall reject the tender where it has established that the tender is abnormally low because it does not comply with applicable obligations in the fields of environmental, social and labour law.

23.3. Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, it may reject the tender on that sole ground only if the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU.

24. Time limits for receipt of tenders and requests to participate

24.1. The time limits shall be longer than the minimum time limits set out in this point where tenders can only be drawn up after a visit to the site or after an on-the-spot consultation of the documents supporting the procurement documents.

The time limits shall be prolonged by five days in any of the following cases:

(a) the contracting authority does not offer direct access free of charge by electronic means to the procurement documents;

(b) the contract notice is published in accordance with point (b) of point 4.2.

24.2. In open procedures, the time limit for receipt of tenders shall be no less than 37 days from the day following dispatch of the contract notice.

24.3. In restricted procedures, in competitive dialogue, in competitive procedures with negotiation, in dynamic purchasing systems and in innovation partnerships, the time limit for receipt of requests to participate shall be no less than 32 days from the day following dispatch of the contract notice. ⇨ In a dynamic purchasing system, 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. ⇦

24.4. In restricted procedures and in competitive procedures with negotiation, the time limit for receipt of tenders shall be no less than 30 days from the day following dispatch of the invitation to tender.

24.5. In a dynamic purchasing system, the time limit for receipt of tenders shall be no less than 10 days from the day following dispatch of the invitation to tender.

24.6. In the procedures after a call for expression of interest referred to in point 13.1, the time limit shall be:

(a) no less than 10 days from the day following dispatch of the invitation to tender for receipt of tenders in the case of the procedure referred to in point (a) of point 13.1 and point (b)(i) of point 13.3;

(b) no less than 10 days for receipt of requests to participate and no less than 10 days for receipt of tenders in the case of the two-step procedure referred to in point (b)(ii) of point 13.3.

24.7. The contracting authority may reduce the time limits for receipt of tenders by five days for the open or restricted procedures if it accepts that tenders may be submitted by electronic means.

25. Access to procurement documents and time limit to provide additional information

25.1. The contracting authority shall offer direct access free of charge by electronic means to the procurement documents from the date of publication of the contract notice or, for the procedures without contract notice or referred to in point 13, from the date of dispatch of the invitation to tender.

In justified cases, the contracting authority may transmit the procurement documents by other means it specifies if direct access by electronic means is not possible for technical reasons or if the procurement documents contain information of a confidential nature. In such cases, the second subparagraph of point 24.1 shall apply except in urgent cases as provided for in point 26.1.

The contracting authority may impose on economic operators requirements aimed at protecting the confidential nature of information contained in the procurement documents. It shall announce those requirements as well as how access to the procurement documents concerned can be obtained.

25.2. The contracting authority shall provide additional information linked to the procurement documents simultaneously and in writing to all interested economic operators as soon as possible.

The contracting authority shall not be bound to reply to requests for additional information made less than six working days before the deadline for receipt of tenders.

25.3. The contracting authority shall extend the time limit for receipt of tenders where:

(a) it did not provide additional information at the latest six days before the deadline for the receipt of tenders although the economic operator requested it in good time;

(b) it makes significant changes to the procurement documents.

26. Time limits in urgent cases

26.1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in points 24.2 and 24.3 for open or restricted procedures, the contracting authority may set:

(a) a time limit for the receipt of requests to participate or tenders in open procedures which shall not be less than 15 days from the date of dispatch of the contract notice;

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

26.2. In urgent cases, the time limit set out in the first subparagraph of point 25.2 and in point (a) of point 25.3 shall be four days.

27. Electronic catalogues

27.1. Where the use of electronic means of communication is required, the contracting authority may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

27.2. Where the presentation of tenders in the form of electronic catalogues is accepted or required, the contracting authority shall:

(a) state so in the contract notice;

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

27.3. Where a multiple framework contract has been concluded following the submission of tenders in the form of electronic catalogues, the contracting authority may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues by using one of the following methods:

(a) the contracting authority invites contractors to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;

(b) the contracting authority notifies contractors that it intends to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question, provided that the use of that method has been announced in the procurement documents for the framework contract.

27.4. When using the method referred to in point (b) of point 27.3, the contracting authority shall notify contractors of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give contractors the possibility to refuse such collection of information.

The contracting authority shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the specific contract, the contracting authority shall present the collected information to the contractor concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

⇩ new

27.5. Contracting authorities may award contracts based on a dynamic purchasing system by requiring that offers are to be presented in the format of an electronic catalogue.

Contracting authorities may also award contracts based on a dynamic purchasing system by notifying the candidates 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 specific procurement in question.

🡻 2018/1046 (adapted)
⇨ new

28. Opening of tenders and requests to participate

28.1. In open procedures, authorised representatives of tenderers may attend the opening session ⇨ physically or, if foreseen in the procurement documents, remotely via videoconference ⇦.

28.2. Where the value of a contract is equal to or greater than the thresholds referred to in Article 179~~175~~(1), the authorising officer responsible shall appoint a committee to open the tenders. The authorising officer may waive that obligation on the basis of a risk analysis when

reopening competition within a framework contract ⇨ , for specific procurements under a dynamic purchasing system ⇦ and for the cases referred to in the second subparagraph of point 11.1 except points (d) and (g) of that subparagraph.

The opening committee shall be made up of at least two persons representing at least two organisational entities of the Union institution concerned with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 61.

In the representations or local units referred to in Article 154~~150~~ or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

28.3. For a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the authorising officer responsible from the Union institution responsible for the procurement procedure.

28.4. The contracting authority shall verify and ensure the integrity of the original tender, including the financial offer, and of the evidence of date and time of its receipt as provided for in Article 153~~149~~(3) and (5) by any appropriate method.

28.5. In open procedures, where the contract is awarded under the lowest price or lowest cost methods in accordance with Article 171~~167~~(4), the prices quoted in tenders satisfying the requirements shall be read out loud.

28.6. The written record of the opening of the tenders received shall be signed by the person or persons in charge of opening or by members of the opening committee. It shall identify those tenders which comply with Article 153~~149~~ and those which do not, and shall give the grounds on which tenders were rejected as set out in Article 172~~168~~(4). That record may be signed in an electronic system providing sufficient identification of the signatory.

29. Evaluation of tenders and requests to participate

29.1. The authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

29.2. For a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the authorising officer responsible from the Union institution responsible for the procurement procedure. The composition of the evaluation committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

29.3. Requests to participate and tenders which are suitable under point 11.2 and neither irregular under point 12.2 nor unacceptable under point 12.3 shall be considered admissible.

30. Results of the evaluation and award decision

30.1. The outcome of the evaluation shall be an evaluation report containing the proposal to award the contract. The evaluation report shall be dated and signed by the person or persons who carried out the evaluation or by the members of the evaluation committee. That report may be signed in an electronic system providing sufficient identification of the signatory.

If the evaluation committee was not given responsibility to verify the tenders against the exclusion and selection criteria, the evaluation report shall also be signed by the persons who were given that responsibility by the authorising officer responsible.

30.2. The evaluation report shall contain the following:

(a) the name and address of the contracting authority ⇨ (in case of interinstitutional or joint procurement – the address only of the lead contracting authority) ⇦ , and the subject matter and value of the contract, or the subject matter and maximum value of the framework contract;

(b) the names of the candidates or tenderers rejected and the reasons for their rejection by reference to ⇨ access to procurement, ⇦ a situation referred to in Article 144~~141~~(1) or to selection criteria;

(c) the references to the tenders rejected and the reasons for their rejection by reference to any of the following:

(i) non-compliance with minimum requirements as set out in point (a) of Article 171~~167~~(1);

(ii) not meeting the minimum quality levels laid down in point 21.3;

(iii) tenders found to be abnormally low as referred to in point 23;

(d) the names of the candidates or tenderers selected and the reasons for their selection;

(e) the names of the tenderers to be ranked with the scores obtained and their justifications;

(f) the names of the proposed candidates or successful tenderer and the reasons for that choice;

(g) if known, the proportion of the contract or the framework contract which the proposed contractor intends to subcontract to third parties.

30.3. The contracting authority shall take its award decision providing any of the following:

(a) an approval of the evaluation report containing all the information listed in point 30.2 complemented by the following:

(i) the name of the successful tenderer and the reasons for that choice by reference to the pre-announced selection and award criteria, including where appropriate the reasons for not following the recommendation provided in the evaluation report;

(ii) in the case of negotiated procedure without prior publication, competitive procedure with negotiation or competitive dialogue, the circumstances referred to in points 11, 12 and 40~~39~~ which justify their use;

(b) where appropriate, the reasons why the contracting authority has decided not to award a contract.

30.4. The authorising officer may merge the content of the evaluation report and the award decision into a single document and sign it in any of the following cases:

(a) for procedures below the thresholds referred to in Article 179~~175~~(1) where only one tender was received;

(b) when reopening competition within a framework contract where no evaluation committee was nominated;

(c) for cases referred to in points (c), (e), (f)(i), (f)(iii), ~~and~~ (h) ⇨ and (m) ⇦ of the second subparagraph of point 11.1 where no evaluation committee was nominated.

30.5. For a procurement procedure launched on an interinstitutional basis, the decision referred to in point 30.3 shall be taken by the contracting authority responsible for the procurement procedure.

31. Information for candidates and tenderers

31.1. The contracting authority shall inform all candidates or tenderers, simultaneously and individually, by electronic means of decisions reached concerning the outcome of the procedure as soon as possible after any of the following stages:

(a) the opening phase for the cases referred to in Article 172~~168~~(3);

(b) a decision has been taken on the basis of exclusion and selection criteria in procurement procedures organised in two separate stages;

(c) the award decision.

In each case, the contracting authority shall indicate the reasons why the request to participate or tender has not been accepted and the available legal remedies.

When informing the successful tenderer, the contracting authority shall specify that the decision notified does not constitute a commitment on its part.

⇩ new

In cases under (a), only the tenderer directly concerned by the decision is notified. In cases under (b), the notifications of the decision taken on the basis of exclusion and selection criteria in a dynamic purchasing system shall be sent individually to the candidates concerned.

🡻 2018/1046

31.2. The contracting authority shall communicate the information provided for in Article 174~~170~~(3) as soon as possible and in any case within 15 days of receipt of a request in writing. When the contracting authority awards contracts on its own account, it shall use electronic means. The tenderer may also send the request by electronic means.

31.3. When the contracting authority communicates by electronic means, information shall be deemed to have been received by candidates or tenderers if the contracting authority can prove to have sent it to the electronic address referred to in the tender or in the request to participate.

In such case, information shall be deemed to have been received by the candidate or tenderer on the date of dispatch by the contracting authority.

CHAPTER 2

Provisions applicable to contracts awarded by Union institutions on their own account

32. Central purchasing body

32.1. A central purchasing body may act as any of the following:

(a) as wholesaler by buying, stocking and reselling supplies and services to other contracting authorities;

(b) as intermediary by awarding framework contracts or operating dynamic purchasing systems that may be used by other contracting authorities as announced in the initial notice.

32.2. The central purchasing body shall carry out all procurement procedures using electronic means of communication.

33. Lots

33.1. Whenever appropriate, technically feasible and cost efficient, contracts shall be awarded in the form of separate lots within the same procedure.

33.2. Where the subject matter of a contract is subdivided into several lots, each one being the subject of an individual contract, the total value of all the lots shall be taken into account for the overall evaluation pursuant to the applicable threshold.

Where the total value of all the lots is equal to or greater than the thresholds referred to in Article 179~~175~~(1), Article 167~~163~~(1) and Articles 168~~164~~ and 169~~165~~ shall apply to each of the lots.

33.3. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

⇩ new

34. Multiple sourcing

34.1. Multiple sourcing procurement may be used only where it is necessary to avoid the over-reliance on a single provider for critical supplies or services, or where it is necessary to have identical or quasi-identical services performed in parallel by different contractors.

34.2 When multiple sourcing procurement is used, contracts shall be awarded within the same procedure. The total value of all foreseen contracts with identical or quasi-identical subject matter shall be taken into account for the overall evaluation pursuant to the applicable threshold.

Where the total value of all the contracts to be awarded is equal to or greater than the thresholds referred to in Article 179(1), Article 167(1) and Articles 168 and 169 shall apply to each of the contracts.

34.3 The contracting authority shall indicate in the procurement documents the maximum number of contracts to be awarded. Contracts resulting from a multiple sourcing procurement shall be awarded by order of ranking as referred to in point 30.2(e) and shall also be signed in that order unless there are duly justified reasons.

🡻 2018/1046
⇨ new

35~~34~~. Arrangements for estimating the value of a contract

35~~34~~.1. The contracting authority shall estimate the value of a contract ⇨ in view of determining the applicable publicity measures set out in Article 167(1) and (2) and choosing

the procurement procedure, ⇦ based on the total amount payable, including any form of options and any renewal.

This estimate shall be made at the latest when the contracting authority launches the procurement procedure.

3534.2. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total duration of the framework contract or dynamic purchasing system.

For innovation partnerships, the value to be taken into account shall be the maximum estimated value of the research and development activities to take place during all stages of the envisaged partnership as well as of the works, supplies or services to be purchased at the end of the envisaged partnership.

Where the contracting authority provides for payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

3534.3. For service contracts, account shall be taken of the following:

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

(b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;

(c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.

3534.4. In the case of service contracts which do not specify a total price or of supply contracts for leasing, hire, rental or hire purchase of products, the basis for calculating the estimated contract value shall be:

(a) in the case of fixed-term contracts:

(i) where their duration is 48 months or less in the case of services or 12 months or less in the case of supplies, the total contract value for their duration;

(ii) where their duration is more than 12 months in the case of supplies, the total value including the estimated residual value;

(b) in the case of contracts without a fixed term or, in the case of services, for a duration exceeding 48 months, the monthly value multiplied by 48.

3534.5. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given period, the basis for calculating the estimated contract value shall be any of the following:

(a) the total actual value of successive contracts of the same type awarded during the preceding 12 months or the preceding financial year, adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

(b) the total estimated value of successive contracts of the same type to be awarded during the financial year.

3534.6. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies and services needed to carry out the works and made available to the contractor by the contracting authority.

3534.7. In the case of concession contracts, the value shall be the estimated total turnover of the concessionaire generated over the duration of the contract.

The value shall be calculated using an objective method specified in the procurement documents, taking into account in particular:

(a) the revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority;

(b) the value of grants or any other financial advantages from third parties for the performance of the concession;

(c) the revenue from sales of any assets which are part of the concession;

(d) the value of all the supplies and services that are made available to the concessionaire by the contracting authority provided that they are necessary for executing the works or services;

(e) the payments to candidates or tenderers.

3635. Standstill period before signature of the contract

3635.1. The standstill period shall run from either of the following dates:

(a) the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers by electronic means;

(b) where the contract or framework contract is awarded pursuant to point (b) of the second subparagraph of point 11.1, the day after the award notice referred to in point 2.4 has been published in the *Official Journal of the European Union*.

If necessary, the contracting authority may suspend the signature of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved candidates or tenderers or by any other relevant information received during the period set out in Article 179175(3). In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Where the contract or framework contract cannot be signed with the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

3635.2. The period set out in point 3635.1 shall not apply in the following cases:

(a) any procedure where only one tender has been submitted;

(b) specific contracts based on a framework contract;

(c) dynamic purchasing systems;

(d) negotiated procedure without prior publications referred to in point 11 except for contracts awarded in accordance with point (b) of the second subparagraph of point 11.1.

CHAPTER 3

Procurement in the field of external actions

3736. Special provisions relating to thresholds and the arrangements for awarding contracts in the field of external actions

Point 2, with the exception of point 2.5, points 3, 4 and 6, point (a) and points (c) to (f) of point 12.1, point 12.4, point 13.3, points 14 and 15, points 17.43to 17.87, points 20.4 and 23.3, point 24, points 25.2 and 25.3, points 26, 28, and 29, with the exception of point 29.3,

shall not apply to public contracts concluded by the contracting authorities referred to in Article 182~~178~~(2) or on their behalf. Points 32, 33 and 35~~34~~ shall not apply to procurement in the field of external actions. Point 36~~35~~ shall apply to procurement in the field of external actions. For the purposes of the second subparagraph of point 36~~35~~.1, the duration of the standstill period shall be the one set out in Article 182~~178~~(1).

Implementation of the procurement provisions under this Chapter shall be decided by the Commission, including as regards the appropriate controls to be applied by the authorising officer responsible where the Commission is not the contracting authority.

38~~37~~. Advertising

38~~37~~.1. If applicable, the prior information notice for calls for tender following the restricted procedure or the open procedure as referred to, respectively, in points (a) and (b) of point 39~~38~~.1, shall be sent to the Publications Office by electronic means as early as possible.

38~~37~~.2. The award notice shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the Union or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

39~~38~~. Thresholds and procedures

39~~38~~.1. The procurement procedures in the field of external actions shall be as follows:

(a) the restricted procedure as provided for in point (b) of Article 168~~164~~(1);

(b) the open procedure as provided for in point (a) of Article 168~~164~~(1);

(c) the local open procedure;

(d) the simplified procedure;

39~~38~~.2. The use of procurement procedures according to thresholds shall be as follows:

(a) the open or restricted procedure may be used for:

(i) service and supply contracts and service concession contracts with a value of at least EUR 300000;

(ii) works contracts and works concessions contracts with a value of at least EUR 5000000;

(b) the local open procedure may be used for:

(i) supply contracts with a value of at least EUR 100000 and less than EUR 300000;

(ii) works contracts and works concessions contracts with a value of at least EUR 300000 and less than EUR 5000000;

(c) the simplified procedure may be used for:

(i) service contracts, service concession contracts, works contracts and works concessions contracts with a value of less than EUR 300000;

(ii) supply contracts with a value of less than EUR 100000;

(d) contracts with a value of less than or equal to EUR 20000 may be awarded on the basis of a single tender;

(e) payments of amounts less than or equal to EUR 2500 in respect of items of expenditure may be carried out simply as payment against invoices, without prior acceptance of a tender.

3938.3. In the restricted procedure referred to in point (a) of point 3938.1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts at least four candidates shall be invited. The number of candidates allowed to submit tenders shall be sufficient to ensure genuine competition.

~~The list of selected candidates shall be published on the Commission's website.~~

If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

3938.4. Under the local open procedure referred to in point (c) of point 3938.1, the contract notice shall be published at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

3938.5. Under the simplified procedure referred to in point (d) of point 3938.1, the contracting authority shall draw up a list of at least three tenderers of its choice, without publication of a notice.

Tenderers for the simplified procedure may be chosen from a list of vendors as referred to in point (b) of point 13.1 advertised by a call for expression of interest.

If, following consultation of the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

3938.6. For legal services not covered in point (h) of the second subparagraph of point 11.1, the contracting authorities may use the simplified procedure, whatever is the estimated value of the contract.

4039. Use of the negotiated procedure for service, supply and works contracts

4039.1. Contracting authorities may use the negotiated procedure with a single tender in the following cases:

(a) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or are designed to provide assistance to people in the social field;

(b) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the procurement documents are not substantially altered;

(c) where a new contract has to be concluded after early termination of an existing contract.

4039.2. For the purposes of point (c) of the second subparagraph of point 11.1, operations carried out in a crisis shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his or her decision regularly having regard to the principle of sound financial management.

4039.3. Activities of an institutional nature referred to in point (a) of point 4039.1 shall include services directly linked to the statutory mission of the public sector bodies.

4140. Tender specifications

By way of derogation from point 16.3, for all procedures involving a request to participate, the tender specifications may be split according to the two stages of the procedure and the first stage may contain only the information referred to in points (a) and (f) of point 16.3.

4241. Time limits for procedures

4241.1. For service contracts, the minimum time between the day following the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days. However, in urgent cases other time limits may be authorised.

4241.2. Tenderers may put questions in writing before the closing date for receipt of tenders. The contracting authority shall provide the answers to the questions before the closing date for receipt of tenders.

4241.3. In restricted procedures, the time limit for receipt of requests to participate shall be no less than 30 days from the date following that on which the contract notice is published. The period between the date following that on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than 50 days. However, in certain exceptional cases other time limits may be authorised.

4241.4. In open procedures, the time limits for receipt of tenders, running from the date following that on which the contract notice is published, shall be at least:

(a) 90 days for works contracts;

(b) 60 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

4241.5. In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:

(a) 60 days for works contracts;

(b) 30 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

4241.6. For the simplified procedures referred to in point (d) of point 3938.1, candidates shall be allowed at least 30 days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.

↓ 2018/1046

ANNEX II

Correlation Table

↑

Correlation table

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