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## REGULATION

### on procurement by parties operating in the water, energy, transportation and postal service sectors.

#### CHAPTER I

#### **Purpose, scope and general principles.**

##### Article 1

##### *Purpose.*

The purpose of the Regulation is to ensure the equal treatment of operators, contribute to efficiency with active competition and foster innovation and development in the procurement of supplies, works and services.

The Regulation specifies rules on joint procurement by parties that operate water, energy, transport and postal services in accordance with paragraph 2, Article 9 of the Act on Public Procurement.

##### Article 2

##### *Definitions.*

Taking the particular characteristics of the activity under the scope of this Regulation into account, the meaning of terms in this Regulation shall be in accordance with the definitions of terms in Article 2 of the Act on Public Procurement.

*Procurer:* A public entity pursuant to Article 3, a public enterprise or company operating on the basis of particular rights or exclusive rights, according to Article 4, engaging in activity in the area of gas or heat, electric energy, water, transport services, harbour or airport services, postal services or oil and gas processing or the processing of other fuels in fixed form, cf. Articles 8-14.

*The Directive (The Supply Directive):* The Directive of the European Parliament and of the Council no. 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, as adopted in the EEA Agreement with the decision of the Joint EEA Committee no. 97/2016 of 29 April 2016.

##### Article 3

##### *Public entities.*

Public entities are the state, local governments and their agencies as well as public entities pursuant to paragraph 2. Associations that such entities, one or more, may engage in can also be counted as public entities.

An entity is a public entity if it can carry rights and duties by law and it has especially been established for serving a public purpose, provided it does not engage in activity that generally will be considered as activity operated by private entities, such as in commerce or manufacturing. In addition, one of the following characteristics shall apply to it:

- a. Its activity is largely operated at the expense of the state or local governments, their agencies or other public entities. The criterion is that the entity concerned is largely operated at the

expense of the state or local governments, their agencies or other public entities if public financing amounts to more than 50% of annual operating expenses.

- b. It is subject to the overall management of the state or local governments, their agencies or other public entities.
- c. It is governed by a special management that the state, local government or their agencies or other public entities appoint in majority.

#### Article 4

##### *Public entities or other entities that operate on the basis of special or exclusive rights.*

The Regulation covers public entities according to Article 3 as well as public entities in the field of gas, heat, electric energy, water, transport services, harbour and airport services, postal services or oil and gas processing or the processing of other fuels in solid form, cf. Articles 8-14.

A public entity according to this Regulation is any entity that can be, directly or indirectly, controlled by public entities through ownership, financial participation or regulations applying thereto.

A controlling interest shall be deemed to be at hand when public entities can, directly or indirectly:

- a. own a majority or the registered shareholding in a company.
- b. control a majority of the votes attached to the share ownership in a company or
- c. have the right to appoint a majority of the board of representatives, the executive committee or the supervisory board of a company.

The Regulation also covers other entities that engage in operations covered under Articles 8-14 and operate on the basis of special or exclusive rights accorded to them by public entities.

Companies shall be deemed to be operating on the basis of special or exclusive rights when they have been granted such rights on the basis of law or administrative instructions that limits activities according to Articles 8-14 to one or more entities and constitute a significant constraint on other entities to operate such activity. Nonetheless, such rights granted through a public and transparent procedure, where the granting of special rights is provided on objective grounds, shall not be viewed as special or exclusive rights in this regard.

#### Article 5

##### *Contracts covered by the Regulation.*

The Regulation covers contracts on supplies, service and work contracts against financial compensation where one or more procurers according to Article 4 enter into with one or more operators with the aim of executing work, the sale of supplies or the provision of services covered by the scope of the Regulation. Such contracts shall always be in writing.

Work contracts include contracts entered into with the aim of executing, or implementing and designing a particular work project or its implementation by whatever means that correspond to the demands made by the procurer. A project in this respect means the result of construction activity or engineering methods that can serve an economic or technical role. A list of activity covered by a work project is attached in Annex I.

A contract for supplies covers contracts awarded with the aim of purchase, leasing or financial leasing, with or without the option to purchase, of supplies. A contract that includes commensurate installation or mounting of a product shall be viewed as a supplies contract.

Contracts for services covers contracts awarded with the aim of providing a service other than listed under work contracts according to paragraph 2.

## Article 6

### *Mixed contracts concerning the same activity.*

Contracts covered by the Regulation and concern two or more types of procurement, i.e. of works, services or supplies, shall be carried out in accordance with the provisions that apply to the type of procurement that characterises the main substance of the contract.

In the case of mixed contracts that in part concern social services or other specialised services according to Chapter X of the Regulation or in part other services or mixed contracts that deal with services in part and in part with supplies, the main substance of the contract shall be determined on the basis of which of the service parts concerned has a higher estimated value or whether the estimated value of the service or supplies component is higher.

In cases of contracts for procurement that come under this Regulation in addition to procurement to which the Regulation does not apply, the procurer can choose between awarding separate contracts for the separate parts or awarding one single contract. When the procurer decides to award separate contracts for the separate parts, the decision on what rules shall apply to each one of such separate contracts shall be made on the basis of the characteristics of the parts concerned. When a procurer decides to award a single contract, the Regulation shall apply unless otherwise determined in Article 31 regarding the mixed contract that emerges, irrespective of the value of its parts that otherwise would come under other regulations and irrespective of which legal rules would apply to such parts. In cases of mixed contracts simultaneously containing supplies, works, service and special rights, the mixed contract shall be awarded in accordance with the Regulation, provided that the estimated value of the part to which the Regulation applies is calculated in accordance with Articles 17-23 and is equally high or higher than the appropriate threshold amount expressed in Article 15.

Since it is not possible to separate the different parts of a particular contract in an objective manner, a decision shall be taken as to what rules shall apply on the basis of the main substance of the contract.

## Article 7

### *Procurement covering a variety of activities.*

A procurer can, in cases of contracts intended to cover a variety of activities, choose to award separate contracts for each type of activity or award a single contract. When the procurer decides to award separate contracts, the decision as to what rules apply to each such separate contract shall be taken on the basis of the characteristics of the relevant activity.

Article 6 notwithstanding, the following paragraphs 4 and 5 shall apply when the procurer awards a single contract. If one relevant activity comes under the regulation on the procurement of agencies engaged in defence and security, Article 32 shall nonetheless apply.

If there is a choice between awarding a single contract or several separate contracts, such choice shall not be made for the purpose of avoiding the application of the Regulation, laws on public procurement or the Regulation on the awarding of special rights.

When a single contract is awarded that covers a variety of activity, the rules applying to such activity considered to be the main substance of the contract shall apply.

In cases of a contract where it is not possible to decide objectively what activity constitutes the main substance of the contract, the following shall apply:

- a. The contract shall be awarded in accordance with the provisions of laws on public procurement if one part of the activity covered by the contract comes under the Regulation and the other part of the activity comes under general public procurement laws.
- b. The contract shall be awarded in accordance with this Regulation if one of such activity that the contract is meant to cover comes under this Regulation and the other activity is covered by a regulation on the awarding of special rights agreements.
- c. The contract shall be awarded in accordance with the Regulation if the other activity covered by the contract comes under the Regulation and the other activity is neither covered by the provisions of laws on public procurement nor under the regulation on the awarding of special rights contracts.

**Activity covered by this Regulation.**

Article 8

*Gas and heat.*

Concerning gas and heat, the Regulation applies to the following activity:

- a. The offer or operation of a fixed distribution system serving the public in connection with the production, transport or distribution of gas or heat.
- b. The delivery of gas or heat by such distribution systems, whether through production, wholesale or retail activity.

When the procurer is not a public entity according to Article 3 and delivers gas or heat to fixed distribution systems serving the public, such activity shall not come under paragraph 1 if the following conditions are satisfied:

- a. The production gas or heat of the relevant procurer is an inevitable consequence of activity not covered in paragraph 1 of this Article or in Articles 9-11.
- b. The delivery to a public distributions system only aims at a profit of such production and does not constitute more than 20% of the turnover of the procurer, based on the average of the three previous years, including the present year.

Article 9

*Electric power.*

Concerning electric power, the Regulation applies to the following activity:

- a. The offer and operation of a fixed distribution system serving the public in connection with electric power production, transmission or distribution.
- b. to deliver electric power to such distribution systems, whether through production, by wholesale or retail.

If a procurer that is not a public entity according to Article 3 delivers electric power to a fixed distribution system serving the public, such activity shall not be deemed to be covered by paragraph 1 if the following conditions are satisfied:

- a. The production of the procurer concerned of electric power takes place because its use is necessary to operate activity not covered in paragraph 1 of this Article or in Article 8, 10 and 11.
- b. The delivery to a public distribution system is solely subject to the own use of the procurer and has not exceeded 30% of its total production of power, based on the average of the previous three years, including the present year.

Article 10

*Water.*

As concerns water, the Regulation applies to the following activity:

- a. The offer and operation of a fixed distribution system serving the public in connection with the production, transportation or distribution of potable water.
- b. The delivery of potable water to such distribution systems, whether due to production, by wholesale or retail.

This Regulation also applies to contracts awarded or design contests organised by a procurer engaged in activity under paragraph 1 concerning one of the following:

- a. Works in connection with water harnessing, irrigation or draining, provided that the quantity of water that is to be delivered as potable water exceeds 20% of the total water volume made available with such structures or through irrigation or drainage structures.
- b. The disposal or treatment of sewage.

If a procurer that is not a public entity according to paragraph 3 delivers potable water to fixed distribution systems serving the public, such activity shall not come under paragraph 1 if the following conditions are satisfied:

- a. The production of the procurer concerned of potable water takes place because its use is necessary for activity not listed in Articles 8-11.
- b. The delivery to a public distribution system is solely subject to the own use of the procurer and has not exceeded 30% of its total production of potable water, based on the average of the previous three years, including the present year.

#### Article 11

##### *Transport services.*

The Regulation applies to activity related to the supply or operation of systems serving the public in the field of transport by railways, automatic systems, trams, public buses, private buses or funicular transport.

Transport services are systems where service is provided according to operating conditions dictated by public authorities, such as the routes where a service is offered, the supply of seats and the frequency of trips.

#### Article 12

##### *Harbours and airports.*

The Regulation applies to activity related to the use of land for the purpose of providing operators transporting cargo by air or sea with airports and harbours or by providing other station facilities.

#### Article 13

##### *Postal services.*

The Regulation applies to activity related to the provision of:

- a. Postal services.
- b. Other services than postal services, provided that such services are supplied by an operator that also provides postal services as defined by laws on postal services and that the conditions set in paragraph 1, Article 39 do not apply.

#### Article 14

##### *Oil and gas production.*

The Regulation applies to activity related to the use of land for oil and gas production or for the exploration or extraction of coal or other fuel in solid form.

## CHAPTER III

**Threshold amounts.**

## Article 15

*Threshold amounts.*

The Regulation applies to the procurement of supplies, services or works related to activity covered by the Regulation, cf. Chapter II where the estimated value, exclusive of value added tax, is equal to or exceeds the following:

- a. ISK 64,438,880 in the case of supplies contracts or service contracts as well as in the case of design contests.
- b. ISK 805,486,000 in cases of work contracts.
- c. ISK 154,160,000 in cases of social service contracts or other specialised services listed in Annex XVII.

Procurements in excess of threshold amounts according to paragraph 1 shall be opened for tenders domestically as well as in the European Economic Area in accordance with such procurement procedures as further specified in the Regulation.

## Article 16

*Procurement below the threshold amounts.*

In procuring below the threshold amounts, the procurer shall endeavour to observe efficiency and the main principles of equality, transparency and prohibition of discrimination.

## Article 17

*Calculation of the value of contracts.*

When calculating the value of a contract, the total amount paid by the procurer, exclusive of value added tax, shall be used as a threshold amount. In such a calculation, account shall be taken of the total amount, including any option clauses and possible contract extensions specified in the tender invitation documents.

If a procurer intends to offer participants a prize amount or other extra emoluments, account shall be taken thereof in calculating the estimated value of the contract.

The calculation shall be based on the time when the tender invitation notice is sent for official publication or when the procurer commences the procurement procedure when there is no obligation to publicly announce procurement.

It shall not be permitted to divide a work or the procurement of supplies and/or services for the purpose of bringing procurement under threshold amounts, unless this is justified on the basis of objective grounds.

When the procurer is divided in separate organisational units, account shall be taken of the estimated total amount of the procurement of all units. If an organisational unit carries independent responsibility for its procurement or certain types thereof, their value may be estimated regardless of the total procurement of the procurer.

## Article 18

*The calculation of the value of a work contract.*

In calculating the estimated value of a work contract, the cost of the work plus the estimated total value of supplies and services that the procurer provides to the operator shall be used as reference, provided that it is necessary for the implementation of the work.

#### Article 19

##### *The calculation of the value of supplies contracts.*

In cases of contracts for financial leases, leases or lease-purchases of supplies, the value shall be calculated in the following manner:

- a. When a contract is temporary for 12 months or less, the total value of the contract shall be used as a basis. When the contract is for a longer period, the total contract value plus the value of supplies at the end of the contract period shall be used.
- b. When the contract is without a time limit or it is not certain what the contract period will be, the total payment according to the agreement for 48 months shall be used as reference.

#### Article 20

##### *The calculation of the value of service contracts.*

In cases of insurance services, the value of a contract shall be based on the amount of premiums or other fees paid. In cases of banking or financial services, the agency fee and interest plus other payments shall be used as a threshold. In cases of design contracts, the amount of fees, agent commission and other emoluments paid shall be used as a threshold.

In cases of contracts where the total amount is not specified, the value shall be calculated in the following manner:

- a. When a contract is for a period of 48 months or less, the estimated contract value shall be for the entire period of the contract.
- b. When the contract is without a time limit or it is uncertain what the contract period will be, the total payment according to the agreement for 48 months shall be used as a threshold.
- c.

#### Article 21

##### *Divided procurement.*

When the procurement of a planned work or service is divided into independent contracts, the total value of all contracts shall be used as a threshold. The same applies when the purchase of supplies of a similar nature is divided into a number of independent contracts. If the total value of the contracts exceeds the threshold amounts, the value of each contract shall be viewed as being in excess of the threshold amount.

Despite the total value of contracts according to paragraph 1 exceeding threshold amounts, the conclusion of individual contracts without tender is allowed for up to 20% of the total value of all contract parts if the estimated value of such contract parts, excluding value added tax, is lower than ISK 12,322,800 for supplies or services and ISK 154,160,000 for a work project.

#### Article 22

##### *The calculation of the value of permanent or renewable contracts for supplies and services.*

In cases of permanent contracts or contracts that shall be renewed within a given time, the estimated value shall be calculated in the following manner:

- a. either by taking into account the total amount of similar contracts in the previous financial year or the past 12 months, having regard to changes in quantity and price for the next 12 months,
- b. or with regard to the estimated cost for the next 12 months or a longer period, as applicable, from the time the supply or the service is first delivered.

The use of special methods of calculation in order to avoid the tender obligation is not permitted.

## Article 23

*The estimated value of frame agreements, dynamic procurement systems and innovative partnerships.*

In cases of a frame agreement or a dynamic purchase system, the total amount of all contracts, exclusive of value added tax, as estimated for the period of the frame agreement or the dynamic purchase system shall be used as a threshold.

In cases of innovative cooperation, the maximum value of research and development, exclusive of value added tax, at all stages of the proposed cooperation, plus the value of supplies, services or works developed or procured at the end of the cooperation period shall be used as a threshold.

## CHAPTER IV

**Exemption provisions.**

## Article 24

*Resale or lease to a third party.*

The Regulation does not apply to contracts award for resale or lease to a third party, if the procurer neither enjoys special nor exclusive rights to sell or lease what is covered by the contract, and that other parties are free to sell or lease the substance of the contract at the same terms as the procurer.

The procurer shall inform the EFTA Surveillance Authority, should it be requested, regarding the categories of supplies and activity it considers covered by this exemption. The EFTA Surveillance Authority shall respect all sensitive business viewpoints pointed out by the procurer when it supplies such information.

## Article 25

*Contracts awarded for another purpose than providing activity that comes under the Regulation or works outside the European Economic Area.*

This Regulation does not apply to contracts by the procurer for another purpose than the activity described in Chapter II of the Regulation or for the purpose of providing such activity in a third country under conditions that do not comprise the material use of a system or territory within the European Economic Area, nor do they apply to design contests organised for such a purpose.

The procurer shall inform the EFTA Surveillance Authority, should it so request, on the categories of supplies or activity that the procurer considers exempt according to paragraph 1. The EFTA Surveillance Authority can regularly publish in an EEA Annex a register of classes of supplies and activity that it considers covered by this exemption. The EFTA Surveillance Authority shall respect all sensitive business viewpoints pointed out by the procurer when it provides such information.

## Article 26

*Contracts awarded on the basis of agreements between states or by an international institution.*

The Regulation does not apply to contracts that the procurer is obligated to award or to design contests it is obligated to organise in concert with other procurement procedures than dictated by this Regulation and initiated in one of the following manners:

- a. By a contract or agreement that constitutes an international commitment, i.e., an international agreement awarded in accordance with the EEA Agreement between Member States within the European Economic Area and one or more third states or parts thereof and that covers works, supplies or services for works that the signatory parties intend to implement or jointly utilise.
- b. By an international institution.



Any contract or agreement listed under subparagraph a, paragraph 1 shall be sent to the EFTA Surveillance Authority.

The Regulation does not apply to a contract or design contest organised in accordance with regulations on procurement issued by an international institution or an international financial institution, if such an institution finances in full or part the contract or design contest concerned. In cases of a contract or design contest that is mostly financed by an international institution or by an international financial institution, the parties shall agree on an appropriate procurement procedure.

The provisions of Article 33 apply to a contract awarded and a design contest organised in accordance with international rules and concern defence and security. The provisions of paragraphs 1 and 2 shall not apply to such a contract or design contest.

#### Article 27

##### *Special exemptions regarding service contracts.*

This Regulation does not apply to service contracts that concern:

- a. The purchase or lease, for any kind of financial compensation, of a farm, buildings already erected or other real property or rights thereof.
- b. The purchase, development or production of materials for radio or television or contracts on viewing times.
- c. Arbitration decisions and conciliation procedures.
- d. The handling of a case by an attorney on behalf of its client or a conciliation procedure before public institutions, courts or arbitration panels or before other international courts or institutions.
- e. Legal counsel provided in the preparation of a case according to item d.
- f. Legal services provided by a financial trustee or a court-appointed representative under the surveillance of a court provided in accordance with law.
- g. The notarisation of documents and certification provided by a notary public.
- h. Other legal services related to the execution of public authority.
- i. Financial services related to the publication, sale, purchase or change in ownership of securities or comparable financial instruments.
- j. Loans, whether they are or are not in relation to the issue, sale, purchase or change in ownership of securities or other financial instruments.
- k. Employment or hiring agreements.
- l. Civil defence or other preventive services against perils provided by institutions or non-profit associations, except the transport of patients by a patient transport service.
- m. General transport of passengers by train or underground railway.

#### Article 28

##### *Contracts awarded on the basis of exclusive rights.*

The Regulation does not cover service contracts awarded to parties or associations of parties that are deemed to be procurers themselves or on the basis of exclusive rights that they enjoy by law or public authority instructions and that are in accordance with the rules of the EEA Agreement.

#### Article 29

##### *Agreement that certain procurers award for the procurement of water, the delivery of power or fuel for power production.*

The Regulation does not apply to the following:

- a. Contracts for the procurement of water if awarded by procurers that engage in one or both kinds of activity in connection with potable water as in paragraph 1, Article 10.

- b. Contracts awarded by procurers who are themselves active in the power sector by providing activity listed in paragraph 1, Article 8, paragraph 1, Article 9 or Article 14 on the delivery of power or fuel for power production.

#### Article 30

##### *Defence and security.*

As regards contracts awarded or design contests organised in the field of defence and security, this Regulation does not apply to:

- a. Contracts covered under the scope of a regulation on procurement of entities in the field of defence and security.
- b. Contracts to which a regulation on procurement by operators in the field of defence and security does not apply, cf. Article 10, 21 and 22 of said regulation.

The Regulation does not apply to contracts and design contests not otherwise exempted according to paragraph 1 to the extent it is not possible to ensure the security interests of the state with measures that do not reach as far, for example by setting requirements aiming at preserving the secrecy of information provided by the procurer in its open procedure for the negotiation of a contract as provided for in this Regulation.

In accordance with Article 123 of the EEA Agreement, this Regulation does also not extend to contracts and design contests not otherwise exempted according to paragraph 1 of this Article, if the application of the Regulation would oblige the state to provide information that it deems contrary to its important security interests.

If it is declared that the procurement or the implementation of a contract or a design contest is secret or if they must be accompanied by special security procedures, this Regulation does not apply if it emerges that the interests noted in paragraph 2 cannot be secured by measures less onerous.

#### Article 31

##### *Mixed contracts that concern the same activity as regards defence or security.*

In cases of mixed contracts that concern the same activity and relate both to procurement under this Regulation as well as procurement or other aspects under Article 123 of the EEA Agreement or a regulation on the procurement of operators in the field of defence and security, the provisions of this Article shall apply.

When it is possible to separate the different parts of a certain contract in an objective manner, the procurer can elect to award separate contracts for separate parts or to award a single contract. When the procurer decides to award separate contracts for separate parts, the decision as to what rules apply for each of such separate contracts shall be taken on the basis of the main substance of each contract.

When a procurer decides to award a single contract, the following criteria shall be applied in determining which rules shall apply:

- a. When a part of a contract comes under Article 123 of the EEA Agreement, it shall be permitted to award a contract without applying this Regulation, provided that the award of a single contract is justifiable on the basis of objective grounds.
- b. When a part of a particular contract comes under regulations on the procurement by operators in the field of defence and security it shall be permitted to award a contract in accordance with such a regulation, provided that the award of a single contract is justifiable on the basis of objective grounds.
- c. The provisions of subparagraph a shall apply to mixed contracts that both subparagraphs a and b could otherwise apply to.

The decision on awarding a single contract shall not be taken for the purpose of sidestepping the provisions of this Regulation or the regulation on procurement by operators in the field of defence and security.

When it is not possible to separate the different parts of a certain contract in an objective manner, the award of contract is permitted without applying this Regulation, provided the contract aspects pertain to Article 123 of the EEA Agreement. Otherwise, it shall be permitted to award a contract in accordance with the regulation on procurement by entities engaged in defence and security.

#### Article 32

##### *Procurements covering a variety of activity and pertain to defence and security.*

In cases of contracts that cover a variety of activity, the procurer can elect to award separate contracts for each type of activity separately or award a single contract. When the procurer decides to award separate contracts for separate parts, the decision as to what rules apply to each such separate contract shall be taken on the basis of characteristics of the main substance of each contract.

When the procurer decides to award a single contract, the provisions of paragraph 3 of this Article apply. If the choice is between awarding one contract or several individual contracts, such a choice shall not have the purpose that such a contract falls outside the scope of this Regulation or a regulation on the procurement of operators in the field of defence and security.

In cases of contracts intended to cover activity under this Regulation and also pertain to:

- a. the regulation on procurement by operators in the field of defence and security, or
- b. Article 123 of the EEA Agreement,

the award of a contract in accordance with a regulation on the procurement of entities in the field of defence and security is authorised in instances listed under subparagraph a and awarding a contract without applying this Regulation in instances under subparagraph b. It shall also be authorised to award contracts listed in subparagraph a that also cover procurement or other aspects that come under Article 123 of the EEA Agreement without applying this Regulation.

The application of paragraph 3 is subject to the condition that the conclusion of a single contract is justifiable on the basis of objective grounds and that the decision of awarding such a contract is not taken for the purpose of sidestepping the provisions of this Regulation.

#### Article 33

##### *Contracts and design contests in accordance with international rules and that pertain to defence and security.*

This Regulation does not apply to contracts or design contests related to defence and security that the procurer is obligated to implement or organise in concert with other procurement procedures as dictated by this Regulation and is adopted by one of the following:

- a. By international agreement or understanding between the EEA Member States and one or more third countries or parts thereof extending to works, supplies or services for works that the signatory parties intend to implement or jointly utilise.
- b. By international agreement or understanding related to the presence of armed forces and concerns the operation of the state or a third country.
- c. By an international institution.

Any agreement or understanding according to subparagraph a, paragraph 1 shall be communicated to the EFTA Surveillance Authority.

This Regulation does not apply to contracts or design contests that pertain to defence and security entered into by the procurer in accordance with regulations on procurement dictated by an international institution or an international financial institution, if such an institution fully finances said contract or design contest. In cases where contracts or design contest are largely financed by an

international institution or an international financial institution, the parties shall agree upon the appropriate procurement procedure.

#### Article 34

##### *Contracts between public entities.*

This Regulation does not over contracts with public legal entities if the following conditions are satisfied:

- a. The legal entity is subject to the control of a public entity or the joint control of more than one public entity.
- b. More than 80% of the activity of the legal entity is performed with the implementation of projects entrusted to it by the public entity or entities controlling it or other entities controlled by such public entities.
- c. The activity of the legal entity is not financed by direct investment of private entities, excepting private investment dictated by special acts of law and that has no impact on the public control over the legal entity.

A legal entity is considered under the control of a public entity pursuant to subparagraph a, paragraph 1 when the public entity has a significant impact upon the organisation and the decisions of the legal entity. A legal entity is considered under the joint control of public entities pursuant to subparagraph a, paragraph 1 if the following conditions are met:

- a. The legal entity is subject to a special board appointed by public entities.
- b. Public entities can jointly have a decisive impact upon the organisation and decisions of the legal entity concerned.
- c. The legal entity has no contrary interests to safeguard against the public entities controlling it.

The Regulation does not cover contracts entered into between two or more public entities if the following conditions are satisfied:

- a. A contract is entered into or implements cooperation between public entities with the aim of ensuring that a public service provided by them attains a common goal.
- b. The cooperation of these entities is in the public interest.
- c. The public entities concerned provide less than 20% of the activity, that the cooperation is concerned with, in the general market.

In assessing the proportion of the activity pursuant to subparagraph b, paragraph 1 and subparagraph c, paragraph 3, account shall be taken of average total turnover or another appropriate criterion, such as the cost that the entity concerned has entered into regarding services, supplies or works for the past three years prior to the conclusion of the contract. If necessary documents are not at hand, the criterion for the activity shall be assessed on the basis of a business plan.

#### Article 35

##### *Contracts awarded to an asset-related operator.*

The term “asset-related operator” refers to any operator with annual accounts that have been merged into the consolidated accounts of the procurer in accordance with requirements set in laws on annual accounts.

Concerning entities that are not covered by annual accounts laws, the term “asset-related operators” refers to any operator that:

- a. can be, directly or indirectly, under the controlling influence of the procurer.
- b. can exert controlling influence over the procurer or
- c. is, along with the procurer, under the controlling influence of another operator due to ownership, financial participation or rules applying thereto.

Controlling influence in paragraph 2 means the same as in paragraph 3, Article 4 of this Regulation.

The provisions of Article 34 notwithstanding, provided that the conditions of paragraph 5 of this Article are satisfied, this Regulation does not apply to contracts that:

- a. a procurer awards to an asset-related operator or
- b. an operator around a joint work project that several procurers have solely established for the purpose of operating activity as described in Articles 8-14 and enters into with an operator that is asset-related with one of these procurers.

The provisions of paragraph 4 apply to:

- a. Service contracts, provided that not less than 80% of the average total turnover of the asset-related operator for the past three years, taking into account the total services provided by the operator, may be attributed to the provision of services to the procurer or other operators related thereto.
- b. Supplies contracts, provided that not less than 80% of the average total turnover of the asset-related operator, taking into account all the supplies the operator delivered over the past three years may be attributed to the delivery of supplies to the procurer or other operators that are asset-related to it.
- c. Work contracts, provided that not less than 80% of the average total turnover of the operator, taking account of all the works implemented by said operator over the past three years may be attributed to tasks carried out for the procurer or other operators related thereto through asset relations.

When the turnover of an asset-related operator for the past three years is not available, it suffices to demonstrate that all figures on turnover, as listed in subparagraphs a, b or c of paragraph 5 are credible, particularly in light of a business plan.

If two or more operators that are asset-related to the procurer, and form a consolidated operator with it, provide the same or similar service, supplies or works, the proportion shall be calculated with regard to the total turnover of such service, supplies or works that such asset-related operators provide.

#### Article 36

##### *Contracts entered into with operators on joint projects or a procurer that holds a share in an operator for a joint project.*

The provisions of Article 34 notwithstanding, and provided that the joint-work operator was established for the purpose of providing the activity concerned over not less than a three-year period and that it is specified in the articles of agreement of the operator on the joint work that the procurers forming it will be parties to it for not less than an equal period, this Regulation does not apply to contracts entered into by the following parties:

- a. operators on a joint project established or formed by several procurers for the sole purpose of conducting business under Articles 8-14 with one of these procurers, or
- b. that a procurer enters into with such an operator on a joint project which it is a part of.

## Article 37

*The provision of information.*

A procurer shall provide the EFTA Surveillance Authority with the following information regarding the application of Articles 35 and 36 if so requested:

- a. The name of the operators or cooperating partners on a joint project.
- b. The nature of the relevant contracts and their value.
- c. The documents that the EFTA Surveillance Authority deems necessary to ascertain that the relationship between an operator or an operator for a joint project, with which a contract has been entered into, and the procurer satisfies the conditions of Article 35 or Article 36.

## Article 38

*Services related to research and development.*

This Regulation shall only apply to service contracts regarding services related to research and development that come und CPV-codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 of the Common Procurement Vocabulary, provided that the gain accrues solely to the procurer for use in its own activity and the recompense for the service provided comes only from the procurer.

## Article 39

*Exemption on the basis that the activity is in direct competition.*

Contracts concerning activity listed in Articles 8-14 do not come under this Regulation if it is confirmed by the decision of the EFTA Surveillance Authority that such activity takes place in direct competition in domestic markets and that access to the market is not limited.

A procurer who considers that a particular activity as listed in Articles 8-14 takes place in direct competition according to paragraph 1 shall submit a request to the EFTA Surveillance Authority where it is demonstrated that conditions for an exemption are at hand regarding competition in markets with regard to a geographical reference market, the nature of the supplies or services, access impediments, market share or other factors of relevance for the assessment. The EFTA Surveillance Authority assesses the submitted request and, as applicable, confirms by decision that conditions for an exemption are at hand in concert with the relevant case procedure.

## CHAPTER V

**General rules.**

## Article 40

*Main principles regarding procurement.*

Regard shall be had to equality, proportionality and transparency in public procurement. Discrimination against operators on the basis of nationality is prohibited or that competition is unnaturally impeded. Appropriate measures shall be taken to prevent conflicts of interest in a procurement procedure in order to ensure equality.

It shall not be deemed contrary to equality to demand that supplies be delivered, a service provided or work carried out at a particular location, provided such a condition is based on substantiated grounds.

## Article 41

*The main principles regarding those who enjoy rights according to this Regulation.*

Operators domiciled in one of the Member States of the European Economic Area or Member States of the EFTA Convention shall enjoy rights according to the Regulation. These operators shall nonetheless not enjoy less rights than operators of other states. Operators of other states also enjoy

rights according to this Regulation to the extent that they enjoy such rights on the basis of an agreement between states entered into by the Icelandic State.

#### Article 42

##### *The obligation of confidentiality.*

A procurer is prohibited from providing sensitive information that an operator has supplied as confidential information. Such information includes information on operation, special technical solutions, unit prices, financial affairs and business transactions as well as such other information that may damage the interests of the operator if access is provided thereto.

A procurer is authorised to demand that an operator observes confidentiality regarding important information provided in the course of the procurement procedure.

The provisions of paragraph 1 do not apply if the Regulation dictates otherwise, particularly the provisions of the duty to officially publish notices of the award of contracts in the European Economic Area, cf. Article 93, and inform participants and tenderers on particular aspects, cf. Article 94, as well as the duty to provide the Appellate Panel for Tender Issues with information according to the Act on Public Procurement.

The provisions of paragraph 1 shall not in other respects have an impact on the obligation of parties to provide information on the basis of the Information Act.

#### Article 43

##### *Contracts related to certain groups.*

It shall be authorised to limit the participation in a procurement procedure to protected workplaces and to operators with the goal of strengthening the social and professional adjustment of people in need of such adjustment. It may also be stipulated that such contracts be according to a plan for protected workplaces.

A condition for a limitation according to paragraph 1 is that not less than 30% of employees in such a workplace or those who work on the implementation of the contract are handicapped or in need of adjustment for social reasons.

If procurement exceeds the threshold amounts according to Article 15, reference to this provision shall be in the open procedure notice.

#### Article 44

##### *Joint procurement*

Procurers are authorised to jointly cooperate in certain individual procurements in accordance with the Regulation.

When a procurer administers a procurement on its own behalf and other procurers, or when procurers participate in joint procurement, they are jointly responsible for satisfying their obligation under the Regulation.

Each procurer is responsible for satisfying its obligation according to this Regulation in respect of a contract awarded on its behalf in a joint procurement procedure and for the part it awards in its own name.

#### Article 45

##### *Procurement in another EEA Member State.*

A procurer is authorised to use a centralised procurement procedure in another EEA Member State to invite tenders for the procurement of supplies, services or works that come under the Regulation in cooperation with the Central Public Procurement, foreign procurers, their associations or representatives or other centralised procurement bodies.

The Competition Authority shall be informed of the prospective procurement along with substantiated reasoning for the application of the authority under paragraph 1. Such reasoning shall be accompanied by a competition evaluation in accordance with the guidelines of the Central Public Procurement. The Competition Authority shall provide its opinion of the evaluation and rule as to whether the tender will tend to upset competition in the domestic market. The ruling does not have a binding effect on the procurement procedure. The procurer can complete the tender invitation, irrespective of the conclusion of the Competition Authority.

As regards procurement based on this provision, the regulations of the respective Member State apply, inter alia, to appeals, validity, procurement decisions and damage compensation.

#### Article 46

##### *A common procurement vocabulary.*

All references to classification systems regarding procurement in excess of threshold amounts according to Article 15 shall be based on the Common Procurement Vocabulary (CPV).

#### Article 47

##### *Rules on communications and submission of documents.*

All communications and the dissemination of information referred to in this Article shall generally take place by electronic means. The equipment used for this purpose shall be generally accessible and its technical attributes shall be configured with the information and dissemination technology in general use. The equipment may not be such that it leads to discrimination between operators or impedes the access of operators to the procurement procedure.

Paragraph 1 notwithstanding, the procurer is not obligated to demand that electronic means be used in the submission of documents if:

- a. the use of electronic methods in communication would, due to the specialised nature of procurement, call for specialised equipment, tools or file formats generally not accessible, or software generally available but does not support it,
- b. the software that supports file formats that are convenient for the description of tenders, uses file formats that other open or generally accessible software cannot use or are subject to a user licence and cannot be made accessible for downloading or remote use by the procurer,
- c. the use of electronic means would demand specialised office equipment that the procurer would generally not have access to,
- d. it is demanded in tender invitation documents that models be submitted that the procurer does not have general access to,
- e. the use of other communications methods is necessary, either due to a security breach in electronic communications or for the protection of especially sensitive information.

If electronic methods are not used in communications, they shall take place by post or other appropriate means of communication.

The provisions of paragraphs 1-3 notwithstanding, oral communications are permissible on parts of communications other than the most important parts of the procurement procedure, provided that the communications are adequately registered. The most important parts of the procurement procedure cover in this respect the tender invitation documents, notices of participation, expressions of interest and tenders. Oral communications with tenderers that can have a significant impact on the content and assessment of tenders shall be appropriately registered, such as in written documents, audio documents or summaries of the main parts of the communications.

Communications, dissemination and the storage of information shall be such that the origin of data is assured and that they have not been revised. It shall also be assured that confidentiality on



tenders and requests for participation are not violated, and the procurer can only apprise itself of the content of tenders or requests for participation after the tender period is closed or the period for requesting participation has expired.

In cases of works contracts or design contests, it shall be allowed to require the use of specialised electronic equipment. In such instances, the procurer shall offer a different access, as described in paragraph 7, until such equipment becomes generally accessible, as understood under paragraph 1.

A procurer can, if necessary, demand that equipment and tools be used that are generally not accessible. The condition is that the procurer offers a different alternative for access in the following manner:

- a. a full, unlimited and direct, free access by electronic means free of charge to such equipment and tools from the date of publication of a notice or from the date when a notice calling for expressions of interest is issued: the text of the notice or invitation for confirming interest shall specify the web address where access can be had to such equipment and tools,
- b. an assurance that a tenderer, not having access to the relevant equipment or tools or has no opportunity to access them within the specified time limit, can have access to the procurement procedure with the use of provisional access equipment without charge, provided that a lack of access cannot be attributed to the relevant tenderer, or
- c. by providing other ways for tendering by electronic means.

The following rules shall generally be applicable to equipment and tools used for electronic transmission and receipt of tenders and the electronic receipt of participant notices:

- a. information on conditions for the electronic submission of tenders and notices of participation, including the encoding and time stamping, shall be accessible to all relevant participants,
- b. as possible, the security level for electronic communication methods at the various stages of a particular procurement procedure shall be specified and it shall be in direct proportion to the risk associated with it,
- c. when a fully valid electronic signature is called for, the procurer shall accept electronic signatures supported by a valid certificate issued by a certification service listed in the list of trusted sources;
  - i. the procurer shall support the format developed for certified electronic signatures and take necessary measures to receive such signatures;
  - ii. once a tender is signed with the support of a valid certificate from a trusted source, no additional requirement shall be made that could impede the use of a tenderer of such signatures.

## CHAPTER VI

### **The procurement procedure.**

#### Article 48

##### *Main principles for the choice of a procurement procedure.*

Procurement in excess of threshold amounts according to Article 15 shall take place on the basis of an open procedure, a restricted procedure or contractual procurement following a tender invitation notice in accordance with the rules of Chapters VII, VIII and IX. It shall also be permitted to apply competitive dialogues pursuant to Article 51, invite for innovation partnership pursuant to Article 52, procure on the basis of a frame agreement pursuant to Article 54 and through a dynamic purchase system pursuant to Article 55.

It shall be authorised to introduce a procurement procedure by the following means:

- a. With a regular pre-notice according to Article 67 when procurement takes place on the basis of a restricted procedure or contractual procurement preceded by a tender invitation notice.
- b. With a notice that a qualification assessment system is at hand according to Article 68 when a contract is awarded through a restricted procedure, contractual procurement, competitive dialogues or through innovation partnerships.
- c. With an open procedure notice according to Article 69.

According to subparagraph a, paragraph 2, operators that have expressed interest following the publication of a general pre-notice shall be invited to confirm their interest in accordance with Article 75.

Paragraph 1 notwithstanding, it shall be permitted to award contractual procurement without the issue of a prior open procedure notice, although only under the circumstances stated in Article 53.

#### Article 49

##### *An open procedure and a restricted procedure.*

In an open procedure, all operators shall be permitted to submit a tender following an open procedure notice. The tender shall be accompanied by information related to a qualification selection the procurer has requested in a notice or tender invitation documents.

In a closed tender, operators can apply for participation in a procurement procedure following a tender invitation notice by submitting information for a qualification selection the procurer has requested in a notice or tender invitation documents. Through pre-selection, the procurer can limit the number of qualified participants in accordance with Article 86. Only those operators that the procurer invites for participation, after having assessed submitted information, can submit a tender in a restricted procedure.

#### Article 50

##### *Contractual procurement preceded by a tender invitation notice.*

In contractual procurement, preceded by a tender invitation notice, operators can apply for participation in the procurement procedure following a tender invitation notice by submitting information for a qualification selection that the procurer has requested in a notice or in tender invitation documents.

A procurer can by pre-selection limit the number of qualified participants invited to participate in the procedure in accordance with Article 86. Only such operators invited by the procurer for participation, after having assessed submitted information, can participate in the contractual discussions.

#### Article 51

##### *Competitive dialogue.*

In a competitive dialogue, operators can apply to participate in a procurement procedure following a tender invitation notice by submitting information for a qualification selection that the procurer has requested in a notice or tender invitation documents. Through a pre-selection, the procurer can limit the number of qualified participants invited to take part in the procedure in accordance with Article 86. Only those operators invited by the procurer through pre-selection, after having assessed submitted information, can participate in the competitive dialogue. The choice criteria of the competitive dialogue shall be based on the best ratio between price and quality in accordance with sub-paragraph 3, paragraph 1, Article 90.

The tender invitation notice shall cover the needs and requirements of the procurer, and these issues shall be further specified in the notice itself or the tender invitation documents. The procurer

shall also present and define the criteria for the selection of a tender that have been decided and present a time schedule.

The procurer shall enter into dialogues with participants that have been selected for participation in accordance with the provisions of Article 86 with the aim of ascertaining by what means its needs be best satisfied. In such discussions, it shall be permitted to discuss all the elements of the prospective contract with selected participants.

During the dialogue, the procurer shall ensure equality between participants and that no information shall be provided that improves the position of some participants at the expense of others. A procurer is not permitted to inform a participant on solutions or other confidential information presented by another participant without the consent of the party concerned.

A procurer can decide that the procedure takes place in several stages in order to reduce the number of solutions under discussion. Such a reduction in the number of solutions shall be based on criteria for the selection of a tender that were laid down in a tender invitation notice or tender invitation documents. It shall be specified in a notice or tender invitation documents that this method may be applied.

The procurer shall continue the discussion until it has limited the solution or solutions that can satisfy its needs.

When the procurer has declared that discussions have been completed and so informed the participants, it shall invite participants to submit a final tender in light of the solution or solutions that have been introduced and explained in the course of the discussions. The participants shall be permitted to explain, clarify and adjust their tenders in line with the request of the procurer. Such explanations, definitions and adjustments or additional information shall not embody amendments to the basic factors of a tender or a notice to tenderers to submit a tender so that competition is distorted or discrimination takes place.

The procurer shall assess a tender on the basis of the criteria for the tender selection that appeared in the original tender invitation notice or tender invitation documents. The procurer is allowed to continue a dialogue with the participant with the tender with the best proportion between price and quality in accordance with Article 90 in order to confirm the commitments embodied in the tender, provided that it does not lead to an amendment in the basic factors of the tender or the tender invitation notice so that competition is distorted or discrimination takes place.

The procurer is authorised to specify prizes or payments to participants for their participation in the dialogue.

## Article 52

### *Innovation cooperation.*

In innovation cooperation, operators can apply to participate in a procurement procedure following a tender invitation notice by submitting information for a qualification selection requested by the procurer in a notice or tender invitation documents. The procurer can, through pre-selection, limit the number of qualified participants invited to participate in the procedure in accordance with Article 86. Only those operators invited by the procurer to participate, after having assessed submitted information, can participate in the cooperation. The procurer can decide to initiate innovation cooperation with one or more parties who are engaged in separate research and development work. The selection criteria for innovation cooperation shall be based on the best proportion between price and quality in accordance with subparagraph 3, paragraph 1, Article 90.

In tender invitation documents, the procurer shall specify the need for an innovation product, service or project that cannot be fulfilled by the procurement of supplies, service or works available in the market. It also needs to be specified what minimum requirements are set for all tenders plus presenting conditions that apply to intellectual property. Information in tender invitation documents

shall be sufficiently precise for operators to ascertain the nature and scope of a solution required and to determine whether they wish to participate in the procurement procedure.

The innovation procedure shall have the aim of developing an innovative product, service or work followed by procurement of such product, service or work derived therefrom, provided that they correspond to the level of usefulness and maximum cost that the procurer and participant have agreed to. The innovation procedure shall be organised in stages that correspond to the different levels of the research and development procedure, as they can cover the production of supplies, the provision of services or the finalising stages of a project. In an innovation cooperation, a stage completion shall be specified for the cooperative partners and the payment of a fee in appropriate partial payments. On the basis of these goals, the procurer can, at the completion of each stage, decide to terminate the innovation cooperation or, in the case of cooperation with more than one partner, reduce the number of cooperative partners by terminating individual contracts, provided that the procurer had so specified in the tender invitation documents.

The procurer shall discuss all the tenders of tenderers, both original tenders and the latter, and adjust the tenders to the needs of the procurer, except in the case of final tenders. No minimum requirements and premises for the choice of tenders shall be negotiated.

In the course of discussions, the procurer shall ensure the equality between participants and that no information is provided that improves the state of certain participants at the expense of others. The procurer shall inform all tenderers, that have not been excluded from the procedure in accordance with paragraph 6, in writing on the revisions in technical descriptions and other tender invitation documents, other than where minimum requirements have been set. Following such revisions, the procurer shall provide the tenderers with sufficient time to revise their tenders and resubmit them, as applicable. A purchaser is not allowed to inform a participant of solutions or other confidential information provided by another participant without its consent.

The procurer can decide that the procedure will take place in several stages to reduce the number of participants. Such a reduction shall be based on premises underlying the selection of tenders, as set out in the tender invitation notice, in an invitation for the expression of interest or in other tender invitation documents. It shall be expressed in a notice or tender invitation documents that this method may be applied.

In the choice of participants, the procurer shall mainly apply the criteria that concern the ability of participants in the area of research and development and in the development and implementation of innovative solutions. In cases of innovation cooperation with more than one participant, the procurer is not allowed to inform other participants of a solution or other confidential information that a participant has provided within the framework of the cooperation, without the consent of the party concerned.

The procurer shall see to it that the structure of the cooperation, in particular the length and value of the different stages, reflect the innovative level of the prospective solution and the order of such research and development stages needed to develop an innovative solution. The estimated value of supplies, services or works shall not be in an abnormal proportion to the investment needed for their development.

#### Article 53

##### *Contractual procurement without a prior tender invitation notice.*

Contractual procurement without a public tender invitation notice is allowed in the following instances, irrespective of whether it concerns the procurement of work, supplies or services:

- a. In cases where no tenders, no valid tenders, no notices of participation or no valid notices of participation are received for a general or closed tender, provided that in the final contract there are no significant deviations from the original conditions in the tender invitation

documents. A tender shall not be considered adequate when it has no relation to the contract and is apparently insufficient without substantial revisions to meet the requirements of the procurer or the requirements specified in the tender invitation documents. A notice of participation shall not be considered sufficient if the operator concerned is or could be excluded according to paragraph 1, Article 86 or Article 79 or if it does not satisfy the qualification requirement of the procurer according to Article 86 or Articles 79-83.

- b. When a contract is solely for research, experiments, investigations or development and not for profit or to recover research and development costs and to the large extent that the conclusion of such a contract does not impact contracts entered into later in a competitive environment and especially for that purpose.
- c. When only one operator qualifies for artistic reasons, since it concerns a unique work of art or artistic performance, then this is not considered a contest for technical reasons or because it concerns a lawfully protected intellectual property right. Exceptions for technical reasons or intellectual property right only apply when no other realistic alternative is at hand or something else that can replace it and the reason why there is no contest at hand is that the variables of procurement have been unnaturally narrowed.
- d. When procurement is totally necessary due to an impending emergency and it proves not possible to adhere to time limits in a general tender, a closed tender or contractual procurement following a tender invitation notice. The circumstances referred to as an impending emergency may not be at the risk of the procurer.
- e. In cases of supplies contracts for additional supplies that either are in part intended to substitute for normal stocks or equipment or constitute an increase in normal inventory or equipment and the selection of a new tenderer would commit the procurer to purchase material with other technical attributes that would poorly mesh with older technical equipment or would lead to inordinate technical difficulties in operations and maintenance.
- f. In cases of a new project or service that is a repeat of a comparable project or service and the same procurer has previously contracted with an operator in a procurement procedure, provided that these projects or services are in concert with the original plan of the original contract. The basic work shall indicate the scope of further projects or services and the conditions for providing them. When the former project is put up for tender, it shall be noted that this method may be applied, and the procurer shall take account of the estimated total cost of latter projects or services when it applies the provisions of Article 15 and Articles 17-23.
- g. In cases of supplies listed and procured at an exchange.
- h. In cases of favourable bargains for supplies when supplies can be procured by taking advantage of particularly favourable opportunities offered over a brief period and where the price is far below a normal market price.
- i. In cases where supplies or services are at particularly favourable terms, either from a seller who is ceasing operations or from the executor of a bankrupt estate or operator under payment arrest or composition.
- j. When a contract shall be entered into following a design contest where it is dictated that it is obligated to negotiate with the participants, one or more, that won the contest. In the case of more than one winner, all those who win the design contest must be offered to participate in discussions.

## Article 54

*A frame agreement.*

Frame agreements shall be made in accordance with the procurement procedures dictated in this Regulation. A frame agreement is a contract that one or more procurers reach with one or more tenderers for the purpose of determining the terms of contracts awarded over a certain period, particularly as regards price and, as applicable, the prospective quantity. The period of a frame agreement must not be longer than eight years except in exceptional cases that are based on substantiated grounds, in particular those that relate to the content of the frame agreement.

Contracts based on frame agreements shall be awarded on the basis of objective rules and criteria that can cover an accelerated open procedure amongst those operators that are a party to the frame agreement. Objective rules and criteria shall be presented in tender invitation documents for a frame agreement and shall ensure the equal treatment of operators that participate in the frame agreement. In case of an accelerated open procedure, the procurer shall provide a deadline long enough to enable a tender for each individual contract, and the procurer shall award each contract separately with the tenderer that has presented the most favourable tender on the basis of the selection criteria presented in the conditions of the frame agreement.

The procurer shall not abuse the frame agreement or use in such a manner that it prevents, limits or distorts competition.

## Article 55

*Dynamic purchase systems.*

Procurements within a dynamic purchase system shall be implemented with a closed tender in accordance with rules applying thereto. The provisions of Article 73 shall apply to time limits for submitting participation requests to a dynamic purchase system. All tenderers that have satisfied the qualification requirements of Chapter VIII shall have the right of access to a dynamic purchase system. When a dynamic purchase system has been established it shall only be based on electronic methods in accordance with Article 47.

It shall be permissible to divide a dynamic purchase system into categories of supplies, work and services that are objectively defined on the basis of the attributes of procurement within each category concerned. If the procurement system is divided into categories, the applicable selection premises for each category shall be defined.

When the procurements take place under a dynamic purchase system, the procurer shall:

- a. Issue a public tender invitation notice where it is stated that this concerns a dynamic purchase system.
- b. It must, *inter alia*, be stated in the tender invitation documents what is the nature of procurement according to the system as well as the estimated quantity of prospective procurements along with necessary information on the system, the electronic equipment needed to make use of it, technical arrangements regarding connection with the system and technical information.
- c. The classification of supplies, works and services shall be specified as well as the characteristics needed for each classification.
- d. A direct, unlimited and full access to tender conditions shall be provided by electronic as well as to other conceivable tender invitation documents from and including the public notice and until such time the system is cancelled. The procurer shall in its notice announce the website where said documents may be accessed.

During the time the dynamic purchase system is in effect, the procurer shall make it possible for all operators to submit at notice of participation and gain access to the procurement system with the conditions set out in paragraph 1. The procurer shall determine whether a notice of participation

satisfies the conditions within ten days from its receipt. The deadline may be extended to 15 days in special substantiated instances. The deadline may also be extended if not tenders appear at the same time. The procurer shall announce the time of the extension of a deadline in tender invitation documents. A procurer shall inform an operator as soon as possible whether it has gained access to a procurement system or not.

A procurer shall offer all operators that have gained access to a dynamic purchase system to submit a tender for individual procurement within the system. If the procurement system has been divided into groups of supplies, work or services, the procurer shall invite all operators to submit a tender that have gained access to the group corresponding to such particular procurements. A minimum of ten calendar days' notice shall be given to submit an offer. The procurer shall base its choice of tender on the most favourable tender according to the premises for the choice of tenders as they appear in the tender invitation notice of the procurement system or in the invitation for expression of interest or in the invitation to submit a tender when the notice of a qualification assessment system is used to announce a tender. These premises can further be defined in an invitation to submit a tender.

A procurer may, at any time a dynamic purchase system is in effect, request that an operator that has gain access to a dynamic purchase system submit a renewed and updated qualification declaration, cf. Article 84, within five business days from the date when the request was submitted.

The procurer shall specify the period in effect of a dynamic purchase system in a tender invitation notice. It shall not be allowed to demand a charge for applications for access to a dynamic purchase system or membership in it.

#### Article 56

##### *Electronic auctions.*

A procurer is authorised to procure through an electronic auction according to further provisions in this Article.

In cases of a general or closed tender or a contractual procurement following a tender invitation notice and it is possible to determine the content of tender invitation documents, particularly technical descriptions, in detail, a procurer can decide that a contract be entered into by electronic auction. Provided that the same conditions are satisfied, an electronic auction may be used when competition takes place between several frame agreement holders pursuant to paragraph 2, Article 54 and with a tender in a dynamic purchase system pursuant to Article 55. An electronic auction shall take place on the basis of:

1. price only, when the premises are based on the lowest price, or
2. price and/or a new price valuation of tender elements if a contract is based on cost efficiency or the best proportion between price and quality.

A procurer who decides to hold an electronic auction shall announce its intention in a tender invitation notice or in an invitation for the expression of interest or an invitation to submit an offer when a notice of a qualification assessment system is used to introduce a tender.

Before an electronic auction takes place, a procurer shall fully take account of already existing tenders of tenderers in accordance with the premises for the selection of tenders and their weight. All tenderers who have submitted valid tenders shall at the same time be invited to participate in an electronic auction. A notice to tenderers shall contain all necessary information on how the tenderer concerned shall be connected to an electronic auction system along with information on the beginning date and time of an electronic auction. An electronic auction may be divided into several stages. An electronic auction shall not begin until two business days after a notice has been sent to tenderers.

When a contract shall be made on the basis of the financially most favourable tender, a notice to the tenderer shall be accompanied by an assessment of its tender that has taken place in

accordance with Article 90. A notice shall also include a calculation model to be used in an electronic auction to automatically determine the rank of tenders on the basis of new prices and/or price valuations that have been tendered. The calculation model shall take account of the weight of all premises that define the financially most favourable tender as these premises have been specified in the tender invitation notice or tender invitation documents. Possible deviations from the weights in the assessment of price valuations that have appeared in tender invitation notices or tender invitation documents shall be defined as constant price valuations. If a variant tender is permitted, a special calculation model shall be presented for each variant.

At each stage of an electronic auction, the procurer shall provide the tenderers with sufficient information so that they can assess the ranking of their tender at any point in time. The procurer can also inform tenderers on other issues regarding price or price valuation that have been set, provided this has appeared in tender invitation documents. The procurer can also disclose the number of tenderers in the relevant state of an auction. However, the procurer is not under any circumstances permitted to disclose the number of tenderers at any stage of the auction.

A procurer shall complete an electronic auction in one or more of the following ways:

- a. By specifying in advance, a particular date and time for the closure of the auction in a notice.
- b. When no more price or price equivalents that satisfy the requirement on minimum changes. Under these circumstances it shall be stated in a notice what time will be allowed to pass from the last tender until the auction is closed.
- c. When those stages of an auction announced in a notice have been closed.

When a procurer decides to close an auction in accordance with subparagraph c, paragraph 7, or, as applicable, also with reference to the method of subparagraph b, Article 7, the time schedule for each stage of an auction shall appear in a notice where the tenderer was invited to participate in an auction.

When an electronic auction has been closed the tenderer shall select the most favourable tender appearing in the auction in accordance with Article 90.

#### Article 57

##### *Electronic supply catalogues.*

If electronic interaction is required in a procurement procedure, it shall be allowed to require tenders to be submitted in the form of an electronic supply catalogue or that a tender be accompanied by an electronic supply catalogue. Operators shall put together an electronic supply catalogue to participate in a particular procurement procedure in accordance with the technical descriptions and in the manner determined by the procurer. Electronic supply catalogues shall be in concert with the requirements of electronic interaction and other supplementary requirements set, cf. Article 47.

When the submission of tenders in the form of electronic supply catalogues is required, the procurer shall so notify in a tender invitation notice or invitation for the expression of interest or invitation to submit a tender when a notice of qualification assessment is used to introduce a tender. The tender conditions shall also contain all necessary information, cf. Article 47, on the file format, the electronic equipment that is to be used along with the technical arrangement regarding a connection to the system and technical information belonging thereto.

When a frame agreement has been made with more than one operator after tenders have been submitted in the form of electronic supply catalogues, a procurer is allowed to enter into an accelerated open procedure between the frame agreement participants for particular procurement on the basis of revised supply catalogues. In such an accelerated open procedure, the procurer can either:



- a. offer operators to resubmit electronic supply catalogues after having adjusted them to the requirement of the particular contract, or
- b. inform operators that it intends to collect from those electronic supply catalogues already submitted necessary information to assemble a tender adjusted to the requirement of the contract concerned, provided that the use of this method has been stated in tender conditions for a frame agreement.

When an accelerated open procedure is used for a single contract, cf. subparagraph b, paragraph 3, operators shall be informed of the date and time the procurer intends to assemble the necessary documents to put together a tender adjusted to the requirements of the particular contract. Operators shall be given the opportunity to reject such information gathering. An appropriate time shall pass between a notice and the assembly of information. Before a contract is made, the procurer shall inform the operator concerned on the information gathered and provide it with the opportunity to protest or confirm that the content of the tender is materially correct.

A procurer is also allowed to enter into contracts on the basis of a dynamic purchase system where it is required that tenders for individual contracts be submitted in the form of an electronic supply catalogue. A procurer can also enter into contracts on the basis of a dynamic purchase system in accordance with subparagraph b, paragraphs 3 and 4, provided that a notice of participation in the dynamic purchase system is accompanied by an electronic supply catalogue in accordance with the technical information and with the file format decided by the procurer. Operators shall complete the supply catalogue following a notice of intent of the procurer to assemble a tender from electronic supply catalogues, cf. subparagraph b, paragraph 3.

#### Article 58

##### *The arrangement of a design contest.*

The provisions of this Article apply to design contests where the aggregate value of prizes or other payments to participants exceeds the threshold amounts for service procurement according to Article 15.

When a design contest is held as part of procurement of services, account shall be taken of the total value of the contract, excluding value added tax, plus the payments listed under paragraph 1. When a design contest is held and the procurer has not relinquished the right to enter into a service contract through contractual procurement according to subparagraph j, paragraph 1, Article 53 following a design contest, it shall also take account of the total value of a possible service contract, excluding value added tax, in addition to the payments listed under paragraph 1.

It is not allowed to limit the admittance to a design contest with reference to nationality or domicile in a particular area or limit access to either legal entities or individuals.

A procurer who intends to hold a design contest shall issue a public notice to that effect. If the procurer intends to enter into a service contract at a later stage in accordance with subparagraph j, paragraph 1, Article 53, it shall be so noted in a notice on a contest. In the notice or explanatory material referred to, there shall be information on the arrangement of the contest, the premises for the choice of participants, if their number is limited, as well as the premises for the selection of a plan or proposal. The drafting of a notice and its publication shall in other respects adhere to the rules of tender invitation notices and their publication, as applicable. Participants in a design contest shall be informed of its outcome. If the publication of a notice would impede law enforcement, be contrary to the public interest or endanger lawful business interests of a certain operator, whether privately operated or under public ownership, or if it could distort competition between the providers of services, the publication of information shall not be obligated.

If it is decided that the number of participants in a design contest is going to be limited to a certain number, regard shall be had to equality by issuing objective grounds for the choice of participants. The number of participants shall always be sufficient to ensure a realistic contest.

A panel of judges shall always consist of individuals who are independent of participants in a contest. Since a particular education or professional qualification is required of participants, at least one-third of the panel of judges shall possess such an education or a comparable professional qualification.

A panel of judges shall be independent in its decisions and opinions. It shall investigate plans and proposals submitted by the participants solely on the basis of the premises listed in to contest notice, cf. paragraph 4. The panel of judges shall prepare a report signed by all the panel members containing the assessment of each proposal along with comments or points that are seen in need of explanation. It shall be allowed to give participants the opportunity to respond to questions that the panel of judges has recorded earlier for the purpose of clarifying points in a proposal. The questions of the panel and the replies of participants shall be reflected in the final minutes of the panel.

## CHAPTER VII

### **Tender invitation documents and the preparation for procurement.**

#### Article 59

##### *Preceding market surveys.*

Before a procurement procedure is initiated, the procurer is allowed to conduct market surveys to prepare procurement and inform operators of the planned procurement and requirements attached thereto.

For this purpose, a procurer can receive advice from operators, independent experts or other public entities. Advice may be used in the organisation or implementation of a procurement procedure on the condition that competition is not distorted and the main principles of transparency and equality are adhered to.

#### Article 60

##### *The participation of an operator in the preparation of procurement.*

When an operator or an entity related to an operator has provided a procurer with advice or participated in the preparation of procurement, the procurer shall make necessary arrangements to ensure that its previous participation does not distort competition. Such measures shall, inter alia, include the provision of significant information to other participants and tenderers and set an appropriate period time limit for tenders.

A particular operator shall only be excluded from a procurement procedure if equality cannot be assured otherwise. Before an operator is excluded, it shall be afforded with the opportunity to demonstrate that its participation, or an entity related thereto, in the preparation of the procurement procedure cannot distort competition.

#### Article 61

##### *Technical information.*

Technical information shall be included in tender invitation documents. Technical information shall cover the characteristics that a work, a good or service must fulfil. Such characteristics can refer to a special procedure or method for the production or delivery of the relevant works, supplies or service or to a special procedure at the second stage of their life cycle, even if such characteristics are not a part thereof, provided that they are related to the content of the contract and are in right proportion to its value and purpose. The technical information may also specify whether the transfer of intellectual property rights is required.

Technical information shall take account of criteria for access for the handicapped or a design for all users, unless the substantiated reasoning of the procurer leads to another conclusion. If lawful requirements have been set on access for the handicapped or a design for all users, such technical information shall be defined with reference thereto.

Technical descriptions shall provide operators with equal opportunity. They may not lead to groundless impediments to public procurement competition.

Inasmuch as no other issues appear in domestic regulations with no possibility for exception and that are in accordance with the commitments of the state of Iceland according to the EEA Agreement, technical description shall be in one of the following manners:

- a. With reference to one of the following in the following order of priority:
  1. domestic standards that embody the introduction of European standards,
  2. European Technical Approval,
  3. common technical specification,
  4. international standards,
  5. other technical reference systems established by European standards agencies.

If the above material is not available, it shall be allowed to refer to Icelandic standards, Icelandic technical approvals or Icelandic technical specifications related to design, calculations or the implementation of a work or the use of a good. Each reference shall be accompanied by the phrase "or equivalent" or a similar wording.

- b. With a description of functioning or requirements for use, including requirements for characteristics related to the environment. Such criteria must, however, be sufficiently precise to enable tenderers to discern the content of the contract and make it possible for a procurer to analyse the difference between tenders
- c. With a description of the function or requirements for use, cf. subparagraph b, although technical descriptions under subparagraph a are used to ascertain whether requirements regarding these points are satisfied.
- d. By referring to instructions, cf. subparagraph a, on some characteristics and by referring to use or requirement for use, cf. subparagraph b, regarding others.

Technical descriptions shall not refer to a particular make, producer, special procedure, trade mark, patent, type, origin or production with the result that operators are discriminated against or that certain operators are excluded from participation in the procurement, provided that such a reference is not directly related to the substance of the contract. Such a reference is allowed in exceptional circumstances when a description of the content of the contract is not possible according to paragraph 4, provided that such a reference has the phrase "or equivalent" or a similar phrase attached.

If the procurer used the authority of subparagraph a, paragraph 4, it shall not reject a tender on the basis that a good or a service offered is inconsistent with technical description, provided that the tenderer demonstrates with some appropriate means that its solutions will satisfy in a comparable manner the requirements that are being sought to satisfy with the relevant technical description. A proof by appropriate means in the above understanding could be embodied in the technical description of the producer or in a test report from a recognised institution, cf. Article 63.

If the procurer makes use of the authority under paragraph 4 to confirm fixed technical description with a description of the function or requirements for use, it shall not reject a tender for a work or service that is in accordance with domestic standards that adopt European standards or are in accordance with a European Technical Approval, joint technical standard order, international standards or other technical reference systems established by European standards institutes, provided that these standards cover the functioning or requirements for use that the procurer has confirmed. In its tender, the tenderer must demonstrate in an appropriate manner, so that the

procurer considers it sufficient that a work, a good or service is in accordance with a standard and fulfils the requirement of a procurer regarding functionality and use. An appropriate proof in this respect could be embodied in a technical description of a producer or a test report from an approved institution, cf. Article 63.

#### Article 62

##### *Label.*

A procurer who intends to procure a work, good or service with special environmental or social attributes is allowed to demand a special label as proof that the associated requirements are satisfied. The procurer can require special environmental or social attributes in technical descriptions, premises for the selection of a tender or conditions regarding the implementation of a contract, provided that the following conditions are met:

- a. That requirement underlying the label only relate to criteria related to the content of the contract and would tend to define the characteristics of work, a good or service that the contract covers.
- b. That requirement underlying a label are based on objective, provable criteria without discrimination.
- c. That the label is established on the basis of open and transparent handling wherein all tht have an active interest, such as government institutions, consumers, parties to the labour market, producers, distributors and other social organisations, can take part.
- d. That the label is accessible to all parties concerned.
- e. That requirements underlying the label are set by a third party, where an operator applying for the label cannot influence to a significant degree.

If a procurer does not require that a work, good or service satisfies all the requirement underlying a label, it shall specify which requirements must be met in the tender conditions. All labels must be agreed to that confirm that a work, good or service fulfil equivalent requirements.

If an operator has apparently not had the possibility of acquiring a label specified by the procurer within a certain time period for reasons not attributable to the operator, the procurer shall approve other relevant proof. The condition is that an operator demonstrates that the work, the good or the service satisfies the requirements made to the label or the requirements of the procurer in the tender invitation documents.

If a label fulfils the conditions of subparagraphs b, c, d or e of paragraph 1 but also covers requirements not related to the content of the contract, the procurer shall not demand the label as such. However, the procurer is allowed to specify a technical description with reference to the description of the label or, if need be, a part thereof, that are related or tend to define the content of the contract.

#### Article 63

##### *Test reports, certification and other proof.*

A procurer can require that operators submit a test report or certificate from a standard testing agency as proof that the requirement or criteria of the technical descriptions, premises for the selection of a tender or conditions regarding the implementation of a contract be satisfied. If the procurer requires a certificate from a special testing agency, it shall at the same time approve certificates from other equally valid agencies.

If an operator has no access to certificates or test reports as per paragraph 1 or has no possibility to obtain them within a particular time period, the procurer shall approve other appropriated items of proof other than those under paragraph 1. The condition is that the reasons for the impediment are not attributable to the operator itself and that it proves that the work, good or

services it offer satisfies the requirements or criteria expressed in technical descriptions, premises for selection of a tender or conditions regarding the implementation of the contract.

#### Article 64

##### *Delivery of technical descriptions.*

A procurer shall, having received a request from an operator expressing interest in a contract, make accessible such technical descriptions regularly referred to in supplies, work or service contracts or the technical description it intends to use for the contract when a pre-notice or tender description is used.

Technical descriptions according to paragraph 1 shall be made accessible by electronic means without charge with unlimited and direct access.

When it is not possible to provide an unlimited and direct access without charge by electronic means to certain tender invitation documents for reasons expressed in paragraph 2, Article 47 or paragraph 2, Article 42, the procurer shall provide access to technical descriptions by other than electronic means. If technical descriptions are based on documents that operators expressing interest already have an unlimited direct access to by electronic means, without charge, it suffices to refer to such documents.

#### Article 65

##### *Variant tenders.*

A procurer can allow or require that a tenderer submits a variant tender that satisfies minimum requirements. The procurer shall specify in tender invitation documents whether it allows or requires that a variant tender be submitted.

The procurer shall specify the minimum requirement that a variant tender must fulfil as well as other special requirements related to its submission. It shall be stated whether it is only allowed to submit a variant tender along with a tender that is not a variant tender. The procurer shall ensure that the selection premises can equally apply to variant tenders that satisfy minimum requirements as well as tenders that are not variant tenders.

A procurer that tenders a supplies or service contract and has allowed or advertised for variant tenders shall not reject a variant for the only reason that a contract, if awarded, would be a service contract instead of a supplies contract or a supplies contract instead of a service contract.

#### Article 66

##### *The division of contracts into parts.*

A procurer can decide to divide a contract into parts and decide the size and content of such contractual parts.

A procurer shall state in a tender description or in an invitation for expressions of interest or in an invitation to submit a tender or enter into negotiations when a notice of a qualification assessment system is used to introduce a tender whether a tender may be submitted for only one, several or all parts of the contract.

A procurer is allowed to set a maximum limit on the number of contracts that may be awarded to each tenderer, provided that it has been stated in the tender invitation notice or in the invitation for expressions of interest, submit a tender or enter into negotiations. The procurer shall state in the tender invitation documents what objective grounds will be used to determine which parts of contracts will be awarded to tenderers if selection premises lead to one tenderer receiving more parts than the maximum.

A procurer is allowed to award contracts for more than one part of a contract with the same tenderer by merging several or all parts of the contract. The condition is that the procurer has made

a reservation regarding the possibility in a tender invitation notice or in an invitation for expression of interest, to submit a tender or enter into negotiations and specified which parts are allowed to be merged.

#### Article 67

##### *Prior notice.*

A procurer is allowed to introduce the prospective procurement with the publication of a prior notice in accordance with Annex VI and IX.

When a closed tender and contractual procurement following a tender invitation notice with a prior notice is announced, the notice shall satisfy all of the following conditions:

- a. A special reference shall be made to the product, service or work covered by the contract.
- b. It shall be stated that the contract will be awarded on the basis of a closed tender or contractual procurement without further publication of a tender invitation notice and that operators will be invited to express their interest in writing or by electronic means.
- c. The notice contains information as appears in Section I and II of part A in Annex VI.
- d. A notice has been sent for publication not less than 35 days and most 12 months before the date before an invitation for expression of interest is sent.

A prior notice shall not be published in the information register of the procurer. A supplementary, country-wide publication according to Article 72 can, however, take place in the information register of the procurer.

#### Article 68

##### *Notice of a qualification assessment system.*

A procurer who intends to establish a qualification assessment system in accordance with Article 85 shall issue a general notice that a qualification assessment system is available in accordance with Chapter X. In the notice, it shall be stated what purpose a qualification assessment system is supposed to serve and how rules on its use may be found. The notice shall also state the period of validity for the qualification assessment system.

The procurer shall inform the Publication Office of the European Union of any change in the period of validity with the following standardised forms:

- a. If the period of validity is revised without terminating the system by using a form for notices that the qualification assessment system is available.
- b. If the system is terminated with a notice of the award of a contract in accordance with Article 93.

#### Article 69

##### *Publication of tenders.*

Tenders that take place according to Article 49-52 for supplies, services or works in excess of the threshold amounts of Article 15 shall be published on the tender website that is the joint publication site for public tenders. At the same time, a general notice shall be published that a qualification assessment system is available, and at a minimum once a year on the tender publication site cf. Article 68. In addition, it shall be allowed to publish any kind of procurement in a prominent manner so that all interested operators can take part in a procurement procedure.

The tender invitation notice shall contain information stated in the relevant part of Annex XI.

At the same time, or after a notice is published, the procurer can encourage certain operators to participate in the procurement procedure. Such operators may not be provided with other information than appear in the notice.

## Article 70

*Advertisement and notice of procurement to the Publications Office of the European Union.*

Advertisements and notices of procurement in excess of threshold amounts in the EEA Area shall be made on standardised forms, cf. the regulation on standardised forms for a joint European qualification declaration and standardised for the publication of notices for public procurement and sent by electronic means to the Publications Office of the European Union and issued in accordance with Annex IX. The procurer must be able to demonstrate on what date a notice was sent to the Publications Office.

Notices shall not be published domestically before they are published abroad according to paragraph 1. However, a domestic publication may take place domestically if the procurer has not been notified of publication within two days from the confirmation of receipt of the notice from the Publications Office of the European Union. Advertisements and notices published domestically shall not include other information that published abroad.

## Article 71

*Main principles of deadlines.*

A deadline for turning in tenders shall be sufficiently long so that a tenderer can prepare a tender. The length of the deadline shall mainly take account of the complexity of the contract and the amount of time it takes to prepare a tender.

A deadline is counted from the date when the tender invitation notice is published, including the day of opening, unless otherwise stated. All calendar days are included.

A deadline for receiving tenders longer than minimum deadlines according to Articles 72 and 73, if it is not possible to submit a tender until after a site inspection, or an investigation of the supporting documents of tender invitation documents on the site, so that all operators can acquaint themselves the information necessary for the preparation of a tender.

A procurer shall extend the deadline for receiving tenders so that all operators can acquaint themselves with the information necessary if important additional information has not been delivered at least six days before the tender deadline expires or when significant revisions of the tender invitation documents have taken place. In case of an accelerated tender, supplemental information shall be delivered not less than four days before the deadline. The length of an extension shall in other respects take account of the importance of supplemental information and revisions to the tender invitation documents. If supplemental information is not requested with appropriate notice, or their importance in the preparation of tenders is insignificant, the purchaser is not obligated to extend the deadline.

The procurer shall extend the deadline for submitting tenders by five days when it is not possible to provide access to tender invitation documents without charge by electronic means, cf. paragraphs 2 and 3, Article 74.

## Article 72

*Deadlines in open procedures.*

The deadline in an open procedure in excess of threshold amounts shall not be less than 35 calendar days.

It shall be allowed to shorten the deadline according to paragraph 1 by five days if electronic tenders can be submitted in accordance with paragraph 47. It is also allowed to shorten the tender deadline according to paragraph 1 to 15 days when a prior notice according to Article 67 has been published not less than 35 days before and most 12 months before the publication of a general announcement.

If a dire need exists for accelerating the tender invitation, the procurer is allowed to deviate from the deadlines of this provision. The deadline must however never be shorter than 15 days from the notice publication.

#### Article 73

##### *Deadline in a restricted procedure, contractual procurement preceded by a tender invitation notice, competitive dialogue and innovative partnership.*

The deadline for submitting requests for participation in a pre-selection for a restricted procedure and contractual procurement preceded by a tender invitation notice, competitive dialogue and innovative partnership in excess of threshold amounts shall generally be 30 calendar days from the publication of a tender invitation notice and never less than 15 days.

In a restricted procedure and contractual procurement, preceded by a tender invitation notice, it shall be allowed to decide a deadline for receiving tenders by mutual agreement between the procurer and selected participants, provided that all selected participants will have the same time to prepare and submit their tenders. If agreement cannot be reached for receiving tenders, the deadline shall be not less than 10 days from the date an invitation for submitting a tender is issued.

#### Article 74

##### *Electronic access to tender invitation documents.*

The procurer shall, without charge, provide unlimited and direct access to tender invitation documents by electronic means from and as of the date of issue of the tender invitation notice or announcement, cf. Article 70, or when the invitation for expressions of interest was issued. When a notice that a qualification assessment system is available and is being used to introduce a tender invitation, access shall be made available as soon as possible and no later than when an invitation to submit tenders or enter into contractual negotiations is issued. A notice or invitations for expressions of interest shall state where tender invitation documents can be obtained by electronic means.

If it is not possible to provide unlimited and direct access to certain tender invitation documents without charge by electronic means for reasons stated in paragraph 2, Article 47, the procurer can state in a notice or invitation for expressions of interest that the relevant tender invitation documents will be sent in another manner in accordance with paragraph 2, Article 47. In such an instance, the deadline shall be extended for submitting tenders by five days except in urgent and well-substantiated instances, cf. paragraph 3, Article 72 or when a deadline is set by mutual agreement, cf. paragraph 3, Article 73.

If it is not possible to provide unlimited and direct access by electronic means without charge to certain tender invitation documents due to a duty of confidentiality according to paragraph 2, Article 42, it shall be stated in a notice or invitation for expressions of interest what measures are needed to protect confidential information and how access can be obtained to the relevant documents. In such an instance the deadline for submitting a tender shall be extended by five days except in urgent and well-substantiated instances, cf. paragraph 3, Article 73 or when a deadline is set by mutual agreement, cf. paragraph 3, Article 73.

The procurer shall provide all tenderers participating in a procurement procedure with supplemental information that in particular is associated with technical descriptions and supplementary documents, if any, no later than six days before the deadline for receiving tenders expires, if supplementary information has been requested with a sufficient advance notice. In the case of an accelerated tender invitation according to paragraph 3, Article 72, the deadline shall be four days.



## Article 75

*Invitation to participants.*

In restricted procedures, contractual procurement preceded by a tender invitation notice, competitive dialogues and innovation partnerships by pre-selection, the procurer shall invite selected participants, simultaneously and in writing, to submit their tenders or, in the case of dialogues, to participate therein.

If a pre-notice is used to advertise a tender invitation in accordance with paragraph 2, Article 54, the procurer shall, simultaneously and in writing, invite operators having expressed interest to confirm that such interest is still at hand.

An invitation to participants shall state where tender invitation documents can be accessed by electronic means. Tender invitation documents shall accompany an invitation if an unrestricted and direct access has not been provided without charge, cf. paragraphs 2 and 3, Article 74, and access to them has not been provided in another manner. The invitation to participants shall in other respects contain information stated in Annex XIII.

## Article 76

*The opening of tenders and recall.*

A procurer shall decide in advance what arrangements will be used for the opening of tenders.

A tenderer can recall a tender before tenders are opened, provided it is done in writing or another equally secure manner.

## CHAPTER VIII

**Selection of participants and the award of contract.**

## Article 77

*General rules on the choice of tenderer and tender.*

The following rules shall apply on the choice of tenderer in a procurement procedure:

- a. That the tenderer satisfies the requirements, conditions and criteria stated in the procurement procedure, cf. Articles 79, 80 and 86.
- b. That a tenderer has not been excluded in a procurement procedure according to the rules and criteria expressed by the procurer in the procurement procedure, cf. Article 86.
- c. In restricted procedures, contractual procurement preceded by a tender invitation notice, competitive dialogue and innovative partnerships, the number of tenderers in a procurement procedure shall be reduced in accordance with subparagraphs a and b of paragraph 1, as applicable.

When a qualification assessment system is used to introduce a tender invitation and the intention is to select tenderers with the intention to award special contracts as referred to in the tender invitation notice, the procurer shall:

- a. Assess the qualification of tenderers in accordance with Article 85.
- b. Apply the provisions of paragraph 1 regarding restricted procedures or contractual procurement, competitive dialogue or innovative partnerships with qualified tenderers.

When a procurer decides on qualifications in the selection of participants in a restricted procedure, competitive dialogue or innovative partnership or revises the premises and rules, the procurer shall not:

- a. Set tenderers conditions regarding management, technical or financial matters that do not apply for others.
- b. Require tests or proof of evidence already existing in the form of objective documents.

When information or documents submitted by a tenderer seem imperfect or contain error or if certain documents are missing, the procurer can request that the tenderer submits, adds, explains or

completes information or documentation within a reasonable period. Such explanations, revisions or supplementary information may not constitute revisions of the basic elements of a tender or be likely to distort competition or promote discrimination.

When information or documents submitted by the tenderer seem imperfect or contain errors or if certain documents are missing, the procurer can require that the tenderer submits, adds, clarifies or completes information or documents within an appropriate period. Such clarifications, revisions or supplementary information may, however, not constitute revisions of the basic elements of a tender or be likely to distort competition or encourage discrimination.

A procurer shall endeavour that tenders submitted by selected tenderers are in accordance with regulations and requirements that apply to tender invitations, and shall select from tenders on the basis of the premises stated in Articles 90 and 92, having taken account of Article 65.

A procurer is allowed to reject the award of a contract with the tenderer who has tendered the most advantageous tender if it can be demonstrated that it does not fulfil wage agreements, laws on environmental protection or social rights.

In an unrestricted procedure, the procurer is allowed to evaluate tenders before it is ascertained whether a tenderer fulfils qualification requirements of Articles 77-92. An adequate assessment of qualification requirements shall nonetheless take place before a contract is awarded to the tenderer.

#### Article 78

##### *General rules on operators.*

It shall not be allowed to reject a participant or tenderer with reference to domestic rules that stipulate that a provider of services shall either be an individual or a legal entity, provided that the participant or the tenderer is allowed to provide the service intended for procurement according to the law of its confirming state. In cases of service contracts or works contracts along with supplies contracts that also cover services and/or supervision and installation, it shall be authorised of a legal entity that it specifies in a tender or notice of participation the names and qualifications of the employees who will see to the implementation of the contract.

Several operators may jointly participate in a tender or notice of participation, provided they bear joint responsibility on the fulfilment of the contract. The procurer is not allowed to demand that such a group of operators establish a special legal form of operation unless it is necessary for the adequate implementation of the contract. Nonetheless, the procurer is allowed to require that one company represents the others in the implementation of the contract and represents all completions to the procurer.

#### Article 79

##### *Reasons for exclusion due to personal circumstances.*

A participant or tenderer who has been found guilty with a final judgement for the following violations shall be excluded from the participation in a procurement procedure:

- a. participation in organised crime,
- b. corruption,
- c. fraud,
- d. acts of terrorism or violations related to terrorism,
- e. money laundering for terrorism financing,
- f. child slavery or any other human trafficking.

A participant or tenderer must also be excluded when an individual who has been found guilty with a final court judgment of a violation according to paragraph 1 is on a board, the executive committee or supervisory board of the operator concerned or has the power to represent, make decisions or exercise control thereof.

A participant or tenderer shall be excluded from participation in a procurement procedure if it has violated its obligations to pay public dues, pension fund contributions or other legally mandated payments and this has been finally confirmed with a court judgment or an administrative decision where the tenderer is registered or in a Member State within the European Economic Area.

A participant or tenderer may be excluded from participation in a procurement procedure when the procurer can demonstrate in an appropriate manner that a participant or tenderer has violated the duties of paying public dues, pension fund contributions or other legally mandated payments. If the participant or tenderer has fulfilled its duties by settling outstanding payments before the day of opening tenders for public dues or settled arrangements for their payments, including interest and fines, it shall not be excluded according to this paragraph.

In exceptional cases, for reasons related to public interest, such as general public health or environmental protection, it shall be allowed to exempt from exclusion according to paragraphs 3 and 4, provided the reasons outweigh those of rejection of the tenderer.

It shall be allowed to exclude operators from participation in a procurement procedure for one of the following reasons:

- a. An operator has violated domestic and international requirements in the field of environment, social issues and labour rights that the procurer is able to demonstrate.
- b. The estate of the procurer is under bankruptcy administration or the operator has been wound up or it has received permission for composition or arrest of payment or is in another comparable position.
- c. The operator has filed for bankruptcy or for being wound up, it has sought composition or the arrest of payments or another comparable position.
- d. The operator has displayed gross negligence in its operations, such as by violation of competition laws that the operator has been able to demonstrate.
- e. The operator has entered into negotiations with other operators for the purpose of distorting competition, such as by price collaboration in a tender invitation that the procurer is able to demonstrate with sufficient probability.
- f. Conflicts of interest exist in a procurement procedure that cannot be rectified with lesser measures.
- g. A former participation of an operator in the preparatory stage, cf. Article 60, is viewed as a distortion of competition and cannot be corrected with lesser measures.
- h. There have been significant and protracted shortcomings in the implementation by the operator of material requirements according to earlier public contracts that have led to a rescission of a contract, claims for damages or other similar restitution.
- i. An operator has submitted incorrect information, hid information or cannot submit appropriate documents required according to Article 84 that are necessary to verify that grounds for exclusion are not at hand or that qualifications are not satisfied.
- j. An operator has unjustly tried to influence the decision-making of the procurer to acquire confidential information that can give it an unjustifiable advantage in a procurement procedure or has by negligence provided misleading information that could have a material influence on decisions regarding exclusion, choice or the award of a contract.

In assessing whether paragraphs 3, 4 and 6 apply to an operator, regard shall be had as to whether this applies to the same operational unit with the same or nearly the same owners in the same or nearly the same branch of business in the same market, without regard to whether the operator has changed its identity number or has been established anew. For this purpose, it shall be allowed to enquire into the business history of managers and principal owners.

Despite subparagraphs b and c of paragraph 6, a procurer is permitted not to exclude the operator concerned when it can be ascertained with assurance that the operator can fulfil the contract.

An operator engaged in any of the circumstances stated in paragraph 1 and paragraph 6 is allowed to present proof that the measures taken will suffice to demonstrate its reliability despite the existence of exclusion grounds. If a proof is considered adequate, the relevant operator shall not be excluded from a procurement procedure.

When an exclusion period has not been decided by final judgement, the period of exclusion shall not last longer than five years from the date of judgment in relevant cases according to paragraph 1 and no longer than three years in cases stated in paragraph 6. The minister is authorised by regulation to set further rules on the maximum exclusion period.

#### Article 80

##### *The qualifications of tenderers.*

A procurer is authorised to set conditions for the participations of operators on the basis of the following qualification requirements:

- a. Professional qualifications, cf. Article 81.
- b. Financial state, cf. Article 82.
- c. Technical and professional ability, cf. Article 83.

It shall only be allowed to set conditions according to paragraph 1 that tend to ensure the lawful and financial ability as well as the technical and professional ability to fulfil obligations according to the proposed contract. Conditions for participation shall be related to a contract and be in appropriate proportion to its content.

A tender invitation description or tender documents shall state what conditions according to paragraph 1 are required for participation and what documents the operator must submit as proof.

#### Article 81

##### *Professional qualifications.*

It shall be allowed to require that an operator demonstrate that it is entered into the Company Register. In cases of operators from other Member States of the European Economic Area or the Member States of the EFTA Convention, it may be required that operators demonstrate an adequate registration in their home country with a certificate.

In cases of service contracts and where tenderers or participants need a special licence or must be members of certain organisations so as to be allowed to provide the service concerned in the home country, it is allowed to require that they demonstrate to have such a licence or are members in such organisations.

#### Article 82

##### *The financial state of the tenderer.*

The financial state of the tenderer shall be sufficiently secure that it can fulfil its commitments towards the procurer. For this purpose, the procurer is allowed to require that the operator has a certain minimum turnover a year, including a certain turnover in the area covered by the contract. The procurer is in addition allowed to require that an operator provides information from its annual accounts that shows ratios, e.g. between assets and liabilities. The procurer is also allowed to require a minimum equity capital on the basis of annual accounts. The procurer is also authorised to require a surety bond.

The condition for a higher minimum annual turnover cannot be set over double the estimated value of a contract unless such conditions are justifiable due to a special risk in light of the nature of

the work project, service or supply. The procurer shall explain the main reasons for such a condition in the tender invitation documents.

It shall be allowed to have regard to the ratio between assets and liabilities when such methods and criteria that are to be applied have been specified in tender invitation documents. Such methods and criteria shall be transparent, objective and without discrimination.

When a contract is divided into parts, requirements for a financial state shall apply to each individual part. However, a requirement may be set on the minimum annual turnover of an operator with regard to more contract parts if the operator selected is awarded a contract for several contract parts that shall be implemented simultaneously.

When procurements take place through accelerated procedures or by a price enquiry within a frame agreement, the maximum turnover according to paragraph 2 is calculated on the basis of the expected maximum size of certain contracts that will be implemented simultaneously, or if it is not known, on the basis of the estimated value of the frame agreement. In cases of a dynamic purchasing system the requirement for a maximum annual turnover according to paragraph 2 is calculated on basis of the expected maximum size of certain contracts awarded within this system.

### Article 83

#### *Technical and professional capacity.*

The technical and professional capacity of an operator shall be ensured so that it can fulfil its commitments towards the procurer. For this end, the procurer is allowed to set conditions that the operator has at its disposal the adequate human resources, technical know-how and experience to implement a contract in accordance with the appropriate quality standard.

A purchaser can require that an operator has sufficient experience to demonstrate with appropriate documents in connection with contracts that the operator has implemented earlier. A procurer is allowed to conclude that an operator lacks the professional capacity when it has been apprised of the conflicts of interest of the operator that can have an adverse impact on the fulfilment of the contract.

In cases of a procurement procedure that contains the installation, service or project, it shall be allowed to especially assess the capacity of the operator to provide the service, perform the installation or carry out the project, particularly with regard to ability, efficacy, experience and reliability.

### Article 84

#### *The qualification declaration of the tenderer.*

An operator is allowed to submit a special qualification declaration as its own declaration and a provisional proof that it can meet the requirements of the procurer in place of certificates issued by public authorities or comparable parties as confirmation of the fulfilment of the following conditions:

- a. That reasons for exclusions for personal reasons according to Article 79 are not at hand.
- b. That the operator fulfils relevant qualification requirements presented in Articles 80-83.
- c. That the operator fulfils, as applicable, the objective rules and criteria presented in Article 86.

If an operator bases on the ability of another party in accordance with Article 87, the qualification declaration of the tenderer shall also contain relevant information according to paragraph 1 regarding that party.

The qualification declaration of the tenderer shall constitute a formal declaration of an operator that the relevant reason for exclusion is not appropriate or that it fulfils the relevant qualification requirements and contains the relevant information required by the procurer. The qualification declaration of the tenderer shall also specify the relevant public authority or such third party that bears

responsibility for preparing support documents and contains a formal declaration that an operator can without delay present such supporting documents, if requested. When a procurer can have direct access to supporting documents in a database, cf. paragraph 8, such necessary information on such access shall appear in the qualification declaration of the tenderer, e.g. the web link of the database, identification requirements and, if applicable, a necessary declaration of consent.

An operator is allowed to use again the same qualification declaration submitted in an earlier procurement procedure if it confirms that the information therein is correct.

The ministry shall issue a standardised form for the qualification declaration of the tenderer that shall only be accessible by electronic means.

A procurer can, at whatever stage of the procurement procedure, require that an operator submits all or part of supporting documents if necessary to ensure the normal progress of the procurement procedure.

The procurer shall, before a public contract is awarded, require that an operator to whom a contract is to be awarded submits revised supporting documents in accordance with Article 88 or, as applicable, Article 89, along with necessary explanations if needed. It shall not be required to present supporting documents in preparing a frame agreement according to paragraph 4 and the first sentence of paragraph 5, Article 54.

The operator shall not be required to submit supplementary documents if the procurer that awards a contract or concludes a frame agreement already has such documents in its possession. When the procurer has direct access free of charge to a country-based database where supporting documents can be accessed, as well as certificates or other written documents on the qualifications of the tenderer, the procurer shall not also require that an operator submits documents or revisions thereof.

#### Article 85

##### *Qualification system.*

A procurer is allowed to establish and operate a system to assess the qualifications of tenderers. A procurer that establishes or operates a qualification assessment system shall see to it that a tenderer can always request a qualification assessment.

A qualification assessment system can cover different grades of qualification assessments. The procurer shall establish objective rules and criteria regarding the exclusion and choice of tenderers requesting a qualification assessment as well as objective rules and criteria regarding the operation of a qualification assessment system that cover issues such as registration into the system, a regular revision of information on qualification, if need be, and the period of validity of the system. If such criteria and rules include technical descriptions, Articles 61-63 apply. These criteria and rules can be revised as needed.

A tenderer shall have access to the criteria and rules as per paragraph 2 if so wished. The tenderer to whom it may concern shall be informed of such revised criteria and rules. If a procurer considers that the qualification assessment system of certain other parties or institutions satisfies its requirement, it shall provide a tenderer, whom it may concern, with information on their names.

A written register shall be maintained over qualified tenderers. The register may be divided into categories according to the qualification each type of contract requires.

If a tender invitation is announced with a notice that a qualification assessment system is available, special supply, work or service contracts that are included under this system shall be offered in a restricted procedure or through contractual procurement where all participants are selected from the group of qualified tenderers in accordance with such a system.

Charges collected in connection with requests for qualification assessment or revisions thereof or the maintenance of information on qualifications already available according to the system shall be in direct proportion to the costs incurred.

#### Article 86

##### *Premises for selection on the basis of qualifications.*

A procurer shall use objective rules and criteria regarding exclusion and selection of tenderers or applicants. These rules and criteria shall be accessible to all tenderers.

When a procurer needs to ensure appropriate balance between certain attributes of the procurement system and the inputs needed to implement it, it can, in restricted procedures or contractual procurements, competitive dialogues or innovative partnerships, establish objective rules or criteria that reflect this need and enable the procurer to reduce the number of participants who will be invited to tender or enter into negotiations. The number of tenderers selected shall be large enough to satisfy requirements for sufficient competition.

#### Article 87

##### *Based on the ability of other parties.*

When objective rules and criteria regarding exclusion or selection of a tenderer that requests a qualification assessment under the qualification assessment system in an unrestricted procedure, a restricted procedure or in contractual procurement, competitive dialogue or innovative partnership and it includes requirements regarding the economic and financial ability of the operator or its technical and professional ability, the tenderer can, if need be, rely on the ability of other entities, irrespective of the legal nature of the relationship with such entities. As regards criteria related to education and the professional qualification of a service provider or contractor or the management team of the operator or the appropriate work experience, the tenderer can only rely on the ability of other entities if the latter will supervise the implementation of the project or provide the service for which this ability is needed. When a tenderer wishes to rely upon the ability of other entities, it shall prove to the procurer that it has control over the relevant resources over the entire period of validity of the qualification assessment system, for example by submitting the commitment of such entities to that effect.

When a procurer has referred to the exclusion criteria or qualification requirements, it shall ensure in accordance with Article 84 and 88 whether other entities that the tenderer intends to rely upon regarding ability shall fulfil appropriate qualification requirement or if there are reasons for exclusion that the procurer has referred to according to Article 79. The procurer shall require that the tenderer finds a new entity instead of the entity that does not fulfil the appropriate qualification requirement or when binding exclusion reasons are at hand. A procurer is allowed to require that a tenderer substitutes an entity, even if exclusion reasons applying to it are not binding.

When an operator relies on the financial and economic ability of another entity, the procurer can require that the operator and the entity concerned bear joint responsibility for the fulfilment of the contract. By the same conditions, a group of operators, cf. paragraph 2, Article 78, can rely on the ability of participants in the group or of other parties.

In cases of project contracts, service contracts or the installation or erection within the framework of a supply contract, the procurer can require that certain and especially important tasks be performed by the tenderer itself or, if the tender is submitted by a group of companies, cf. paragraph 2, Article 78, by a certain participant in that group.

## Article 88

*Evidence.*

A procurer can require that certificates, declarations and other documents be submitted as evidence that there are no reasons at hand for exclusion according to Article 79 and that relevant qualification requirements are satisfied according to Articles 80-83. The procurer shall not demand other evidence than appears in this Article and in Article 89 on quality and environmental standards. As regards Article 87, operators can use any appropriate methods to prove to the procurer that they have sufficient solutions at their disposal.

If an operator is required to submit evidence on the issues of Article 79, the following shall be viewed as adequate evidence:

- a. As regards the conditions of paragraphs 1 and 2, Article 79, the presentation of a penalty record statement, the statement of a court or, if such statements are not available, a similar statement from a public authority or court in the state of origin or domicile of the operator concerned, showing that said conditions are satisfied.
- b. As regards paragraphs 3 and 4 and subparagraphs b and c, paragraph 6, Article 79, a sworn statement or an oath by the tenderer on said issues before a judge or a public authority, a notary public or a qualified professional association in the operator's home state shall be assessed.

If the home state of an operator does not issue documents or statements such as these, or such documents and statements do not cover all instances of paragraphs 1, 3 and 4 as well as subparagraphs b and c, paragraph 6, Article 79, a sworn statement or oath of the tenderer regarding said issues before a judge or public authority, a notary public or a qualified professional association in the operator's home state shall be assessed.

Operators can submit proof of their financial position cf. Article 82 by one or more of the methods listed in a regulation set by the minister. If an operator, for a valid reason, is unable to submit the documents required by the procurer, it can demonstrate its economic and financial position with other documents that the procurer considers adequate.

An operator can prove its technical ability, cf. Article 83, with one or more of the methods that shall be listed in a regulation set by the minister as necessary by the nature, extent, importance or the intended use of the project, supply or service.

## Article 89

*Quality and environmental standards.*

When a procurer requires the submission of statements from independent entities confirming that operators fulfil certain quality standards, including access for the handicapped, it shall refer to quality systems based on the appropriate European standards, having received the approval of certified institutions. A procurer shall recognise equivalent statements from institutions that have been certified in other Member States of the European Economic Area or the Member States of the EFTA Convention. The procurer shall also recognise other documents submitted by the operator that provide comparable proof for the adequate measures taken with respect to quality standards.

When a procurer requires statements from independent entities confirming that an operator fulfils certain environmental management standards and systems, it shall refer to the Community eco-management and audit scheme (EMAS) or to eco-management systems recognised in accordance with the provisions of regulations to that effect or to other eco-management standards that are based on the appropriate European or international standards of certified institutions. A procurer shall recognise equally valid statements from institutes domiciled in other Member States of the European Economic Area or the Member States of the EFTA Convention.



If an operator has apparently not had access to statements according to paragraphs 1 and 2 or a possibility to obtain the same within the deadline given, for reasons not attributable to the operator, the procurer shall approve other equally valid documents of evidence.

#### Article 90

##### *Premises for the selection of a tender.*

The procurer shall select the financially most favourable tender on basis of the following:

1. the lowest price,
2. the least cost or
3. the best ratio between price and quality.

The premises for the selection of a tender on the basis of subparagraph 2, paragraph 1 shall be assessed on the basis of cost efficiency, for example a calculation of the life-cycle cost.

The premises for the selection of a tender on the basis of subparagraph 3, paragraph 1 shall be associated with the content of a contract and can, inter alia, extend to the following:

- a. Quality, including technical advantages, look and utility, access, design for all users, social, environmental and innovative features, their tradability and condition.
- b. The organisation, education, qualification and experience of the staff that shall implement the contract, particularly if the ability of the staff that is to implement the contract can materially impact its implementation.
- c. Service upon completion and technical support, conditions of delivery, such as the date of delivery, delivery process and time of delivery or a deadline for completing a project.

In selecting a tender on the basis of subparagraph 3, paragraph 1, a procurer is allowed to decide upon a fixed price or fixed cost and select a tender solely on the basis of quality, environmental or social factors.

The premises for the choice of a tender shall be associated with the contents of a contract if it concerns projects, supplies or services rendered in accordance with a contract, in some respects or at some stage of its life-cycle, including factors that concern:

- a. A special process in the production, delivery or business with such projects, supplies or services.
- b. A special process at another stage of its life cycle, even if such factors are not a part thereof.

A procurer shall arrange the premises for the choice of a tender in such a way that it will ensure the possibility for active competition. It must also be possible to verify information from tenderers to assess how well the tenders fulfil the premises.

The procurer shall record in its tender invitation documents the proportional weight of each premise underlying the selection of the financially most favourable tender, unless when a selection of a tender is only based on price. This weight may be expressed as a certain range with appropriate maximum deviations. If it proves impossible to state a certain weight of premises for objective reasons, the premises shall be prioritised after their importance.

#### Article 91

##### *The calculation of the life cycle cost.*

The calculation of the life cycle cost shall, as applicable, cover a part or all of the following cost of the life cycle of supplies, services or a project:

- a. The cost carried by the procurer or other users, such as:
  1. the cost in connection with procurement,
  2. the cost of use, for example with energy use or the use of other natural resources.

3. the cost of maintenance,
  4. the cost of processing, such as the cost of collecting and reprocessing.
- b. The cost attributed to environmental impact associated with supplies, services or a project during their life cycle, provided that it proves possible to determine and verify their value. Such cost can include the cost of greenhouse gases and other release of polluting substances as well as other costs of reducing air quality changes.

When a procurer assesses the cost based on calculations of the life cycle cost it shall state in tender invitation documents which documents tenderers need to submit and what method a procurer will use to determine the life cycle cost on the basis of these documents. The method used to assess the cost of environmental impact shall fulfil the following conditions:

- a. they shall be based on objective and verifiable criteria without discrimination, if not for repeated and constant use it shall not be more favourable or less favourable for certain operators so that it be unfair,
- b. be accessible to all affected parties,
- c. operators shall be able to submit the required documents considered adequate without leading to discrimination.

If a particular method has been bound into law for the calculation of a life cycle cost, it shall be used in the assessment of life cycle cost.

## Article 92

### *Unnaturally low tenders.*

If a tender seems abnormally low, based on the project, supplies or services, the procurer shall request that the tenderer explains the price and cost appearing in the tender. Such explanations can in particular pertain to:

- a. the efficiency of the production process, service or method of construction,
- b. technical solutions chosen and any unusual circumstances of the tenderer in the implementation of the project, the supply or the service,
- c. originality in the proposal of the tenderer regarding a project, the supply or the service
- d. consistency with the provisions of wage agreements in effect and environmental protection laws, social rights and workplace protection and conditions on the location for the implementation of the project, the delivery of supplies or provision of service,
- e. the obligations of the tenderer to subcontractors, cf. Article 97,
- f. the possibility of the tenderer for obtaining state aid

The procurer shall assess the information provided through dialogue with the tenderer. A tender may only be rejected on this basis if the documents of evidence submitted do not adequately explain the low price or cost incurred, taking account of the factors stated in paragraph 1.

If they procurer reaches the conclusion that a tender is abnormally low because the tenderer has received state aid its tender will only be rejected if the tenderer has been unable, within an appropriate time limit determined after a tenderer was provided with the opportunity to comment, to demonstrate that state aid was lawfully provided. If a procurer rejects a tender under these circumstances, it shall inform the EFTA Surveillance Authority of the decision if the procurement is in excess of threshold amounts according to Article 15.

A procurer is obligated to substantiate its decision to reject a tender on the basis that it is unnaturally low.

## Article 93

*Notice of contractual drafting.*

When procurement is in excess of threshold amounts, the procurer shall give notice of the drafting of a contract no later than 30 days after the conclusion of a contract or frame agreement with the conclusion of the procurement process. The conclusion of a contract under a dynamic purchasing system shall also be announced, although it shall be allowed to gather notices together and issue within 30 days from the close of each quarter. In the case of a frame agreement made in accordance with Article 54, the procurer is not obligated to issue a notice on the conclusion of the procurement process for each contract based on such a frame agreement.

A notice of an agreement shall contain information stated in Annex XII and the publication shall take place in accordance with Annex IX. The notices shall be sent to the Publications Office of the European Union that will publish them, cf. Article 70.

If an agreement has been published with a tender invitation with a pre-notice and the procurer has decided not to conclude further agreements during the time covered in the pre-notice, this shall be especially stated in the notice of the agreement.

It shall be allowed to withhold certain information on the making of an agreement or frame agreement if the publication of such information could impede or obstruct law enforcement. The same applies if the publication of information is contrary to the public interest or would damage the lawful business interests of individual companies, whether private or public, or competition between them.

In cases of service agreement related to research and development, the information on the nature and extent of services can be limited to:

- a. The specification “service linked to research and development” where contracts have been awarded through contractual procurement without a tender invitation notice in accordance with subparagraph b, paragraph 1, Article 53,
- b. The information that are at least equally detailed as those stated in the notice used to publish the tender invitation.

The information stated in accordance with Annex XII and marked not for publication shall only be published in a simplified form and in accordance with Annex IX as statistical information.

## Article 94

*Notice of selection of a tender and substantiation of the rejection of tenders.*

The procurer shall inform participants or tenderers of the decision of selecting a tender, the making of a frame agreement or admission to a dynamic purchase system as soon as possible. The notice shall contain information as applicable on decisions of not creating a frame agreement, accepting no offer in spite of a tender invitation or recommence with a new tender invitation or initiate a dynamic purchase system. The procurer shall provide this information in writing if so requested.

A notice according to paragraph 1 shall be sent to all operators that have not been rejected or excluded from a procurement procedure with a final decision. A decision of exclusion shall not be viewed as final until the tenderer has been informed thereof and deadlines for bringing it before the Public Procurement Complaints Commission have expired or it has been confirmed by the Commission.

Upon request, the procurer shall as soon as possible provide substantiation for its decision as follows:

- a. A participant not selected to submit a tender shall be informed as to why its application has been rejected.
- b. A tenderer shall be informed of the decision why its tender was rejected. If a tender has been rejected with reference to the tender having been inconsistent with technical

information, cf. paragraphs 6 and 7, Article 61, it shall be substantiated why the tender does not satisfy the requirements of technical description and why it is insufficient with reference to requirements of function and use.

- c. A tenderer that has submitted a valid tender shall be informed of the attributes and advantages of the tender chosen by the procurer as well as the name of the tenderer chosen or the frame agreement holder.
- d. A tenderer that has submitted a valid tender shall be informed of the implementation and procedure of contractual dialogues and dialogues with tenderers.

A request for substantiation according to paragraph 3 shall be stated within 14 days from the time the tenderer was informed of a decision, and substantiation shall be made available no later than 15 days after a request was received by the procurer or the representative of the tender invitation. The substantiation shall, however, not contain information on issues pertaining to the selection of a tender, the making of a frame agreement or access to a dynamic purchasing system if such information could impede law enforcement. The same applies if the provision of information is contrary to the public interest in other respects or would damage lawful business interests of individual companies, private or public, or competition between them.

A procurer who establishes and operates a qualification assessment system shall inform participants of its decision regarding the qualification assessment within six months. If a decision takes more time than four months from the submission of an application, the procurer shall inform the participant within two months from the time an application is submitted of the reasons for extending the deadline and before what date its application will be approved or rejected.

Participants rejected by the procurer on the basis of qualification shall be informed of the reasons for the decision as soon as possible and no later than 15 days after the date of a notice of rejection. The reason for the rejection shall be based on the qualification assessment criteria of paragraph 2, Article 85.

A procurer who establishes and operates a qualification assessment system can only revoke the qualification assessment of a company on the basis of criteria of qualification assessment of paragraph 2, Article 88. A company shall be informed in writing of all intentions to revoke a qualification assessment not less than 15 days before the date when the revocation takes effect, along with the reason or reasons for such action.

#### Article 95

##### *Stand still period for awarding a contract and accepting tenders.*

It shall be not allowed to award a contract in the wake of a decision to select a tender until after a ten-day waiting period has passed, applying to procurement above threshold amounts, from the date after a notice according to paragraph 1, Article 94 is seen as having been published. The waiting period is however always viewed as finished when 15 days have passed from the sending of a notice. In cases of electronic notices, account shall be taken of the instructions of the Administrative Procedures Act on electronic handling of issues, as applicable.

The waiting period according to paragraph 1 does not apply in the following instances:

1. For a contract that is allowed to be awarded without a prior tender invitation notice.
2. For a contract where it is conclusively determined that only one tenderer or participant is at hand.
3. For a contract on the basis of a frame agreement or a dynamic purchase system.

An offer shall be conclusively accepted in writing within the period of its validity after which a binding contract on the basis of tender invitation documents and the tender of a tenderer is established.

When a procurer is unable to determine which tender to accept within the period of validity or a tender, it shall be allowed to request that tenderer extend their tenders for a brief period. This is on the condition that the consent of all tenderers is given or that there are objective grounds that justify such an extension. Under the same condition it shall be allowed to request that after the period of validity of a tender has expired that tenderers declare that their tenders are valid anew, although only for a brief period. When a contract has been declared inactive according to the provisions of Chapter XII of the Act on Public Procurement, it shall be allowed to accept a tender that rightly should have been selected without regard to the time of validity of the tender.

It shall be allowed to award a special contract on the procurement of supplies, service or a project on the basis of the tender invitation after a tender has been approved, but the basic elements of the tender shall not be changed so that competition is distorted, or discrimination will exist.

Once a contract has been awarded, all tenderers shall be so informed without delay.

## CHAPTER IX

### **The implementation of a contract.**

#### Article 96

##### *Conditions pertaining to the implementation of a contract.*

A procurer is allowed to stipulate special conditions pertaining to the implementation of a contract if the conditions are related to the contract, cf. paragraph 5, Article 90, and had been recorded in the tender invitation notice or tender invitation terms. The conditions can in particular relate to issues regarding economic, innovation-related, environmental, social or employment-related viewpoints.

#### Article 97

##### *Subcontractors.*

It must be stated in a tender invitation documents that the tenderer discloses what parts of the contract it intends to let a third party carry out as subcontractor, and such information shall be at hand before the contract is signed.

A tenderer shall inform the procurer what subcontractors it intends to use and seek approval of the procurer before the subcontractor begins working. The procurer is equally allowed to require that the tenderer submits a qualification declaration according to Article 84 for subcontractors. If reasons for exclusion apply to a subcontractor, the procurer shall, as applicable, require that it be replaced by a new subcontractor.

Information of the tenderer on subcontractors has no impact upon the warranty of the tenderer towards the procurer. A subcontract shall in all instances be based on a written project contract.

#### Article 98

##### *Changes in a contract during the period of validity.*

It shall be allowed to amend a contract or frame agreement without starting a new procurement procedure in the following instances:

- a. When conditions for revisions, without regard to their value, have been clearly stated in the provisions for revision of a contract, including provisions on price changes or choice options. Such provisions shall dictate the extent and nature of possible changes or options for choice and conditions applying thereto.
- b. In cases of additional work, service or supplies, irrespective of their value, not anticipated in the contractual procurement and is deemed necessary for unforeseen instances, the same party shall see to it, provided that it is not possible to separate it from the original

procurement without substantial difficulties for the procurer for technical or financial reasons.

- c. When the need arises for changes due to unforeseen circumstances that the procurer could not anticipate.
- d. When another operator enters instead of the one the procurer awarded the original agreement to, due to the application of a revision provision, cf. subparagraph a, of a reorganisation of an operator where another operator that fulfils the premises of a qualification assessment, is inserted into the position of the original contractor as a whole or in part, provided that this does not entail other significant changes in a contract or in instances when the procurer itself assumes the duties of a prime contractor towards the subcontractor.
- e. When revisions, irrespective of their value, are insignificant, cf. paragraph 4.
- f. When the value of revisions is below the threshold amounts according to Article 15 and when the value of revisions is less than 10% of the original value of a service or supply contract and 15% of the original value of a project contract. When revisions are made in a row, one after the other, their value shall be assessed on the basis of the cumulative value of the revisions.

It is not allowed to make revisions according to subparagraphs a, c and f, paragraph 1, that encompass revisions to the nature of a contract or frame agreement as a whole. As regards the calculation of the value under subparagraph f, paragraph 1, account shall be taken of the revised value when the contract contains clauses on price compensation.

If a procurer decides to revise a contract in accordance with the conditions stated in subparagraphs b and c, paragraph 1, a notice shall be published to the effect that a revision has been made to the contract. The notice shall contain information as stated in Annex XVI and shall be published in accordance with Article 93.

A revision of a contract or frame agreement shall be considered significant as understood under subparagraph e, paragraph 1, when the content of the contract will be different from what was agreed upon. The revision shall always be viewed as significant if one of the following condition exists:

- a. The revision would have enabled more tenderers to take part in the original procurement procedure, if it had existed in the first place.
- b. A change takes place in the financial balance of a contract or frame agreement in favour of an operator not anticipated in the original contract or frame agreement.
- c. The revision substantially widens the scope of the contract or frame agreement.
- d. If another operator comes instead of the one to which the procurer awarded the original contract in other instances than stated in subparagraph d, paragraph 1.

A new procurement procedure shall be initiated if other revisions are to take place to a contract or frame agreement than stated in paragraph 1.

#### Article 99

##### *Termination of a contract.*

A procurer is allowed to unilaterally terminate a contract during its period of validity under the following conditions:

- a. If a significant revision has been made to the contract that should have led to the commencement of a new procurement procedure, cf. Article 98.
- b. An operator originally selected should have been excluded from the procurement procedure, cf. paragraphs 1 and 2, Article 79.
- c. A contract should not have been awarded to an operator due to a serious violation of the Regulation.

## CHAPTER X

**Special provisions on social services and other specialised services.**

## Article 100

*The making of contracts on social services and other specialised services.*

Contracts on social services and other specialised services, stated in Annex XVII, shall be awarded in accordance with this chapter if the value of the contracts exceeds the threshold amounts according to subparagraph c, paragraph 1, Article 15.

The procurer is allowed to use whatever procurement procedure described in this Regulation but must decide so beforehand and publish a notice in accordance with rules of Article 101.

The provisions of chapters XI and XII of the Act on Public Procurement shall apply to procurement according to paragraph 1. In other respects than stated in this chapter, this Regulation does not cover such procurement unless otherwise stated.

## Article 101

*The publication of notices.*

A procurer who intends to conclude a service contract according to Article 100 shall announce its intention in the following manner:

- a. with a special tender invitation notice.
- b. with a special pre-notice that shall be repeatedly issued. The pre-notice shall refer especially to the type of service for which contracts are to be awarded. The notice shall state that the contracts will be concluded without further publication, and interested parties shall be invited to express their interest in writing.
- c. or with a notice of a qualification assessment system being in place, which shall be repeatedly published.

Paragraph 1 notwithstanding, a procurer is allowed to enter into contractual procurement without a prior notice in accordance with Article 53.

A procurer shall inform of the conclusion of a procurement procedure with a notice on the conclusion of a contract. It shall be allowed to gather the notices and send them on a quarterly basis. Such notices shall be sent within 30 days from the end of each quarter.

The notices according to paragraphs 1 and 3 shall contain information as stated in Annex XVIII, as applicable, in accordance with the standardised notice forms, cf. the regulation for a standard form for a pan-European qualification declaration and the standardised forms for the publication of notices for public procurement exceeding EEA threshold amounts. Notices shall also be communicated to the Publications Office of the European Union that administers their publication, cf. Article 70.

## Article 102

*Main principles on the selection of tenders.*

In selecting tenders, the procurer shall observe the main principles of procurement according to Article 40. A procurer is always allowed to take the special characteristics of services into account and base a selection of tenders on such characteristics. For such a purpose, it can in the contract negotiations take, inter alia, account of the necessary quality of the service, its efficiency, innovation, the special needs of the different categories of the users of the service as well as the participation and power enhancement of the users. The procurer is also free to choose the service provider on the basis of the tender that encompasses the best ratio between price and quality, taking into account the quality and self-sustaining criteria for social services.

## CHAPTER XI

**The activity of a procurement agency, documents and the EFTA Surveillance Authority.**

## Article 103

*The activity of the purchasing agency.*

The Central Public Procurement is a centralised procurement agency of the state, reporting to the minister cf. Chapter X of the Act on Public Procurement no. 120/2016.

Procurers under the scope of this Regulation, cf. Articles 3 and 4, are allowed to use the services of the Central Public Procurement.

Public agencies under the auspices of the state are also allowed to participate in certain centralised public procurements or be a party to a frame agreement under the Central Public Procurement, provided they are not the equivalent of private entities in competitive operations.

## Article 104

*Single reports of procurements exceeding threshold amounts.*

For each contract or frame agreement and each time a dynamic purchasing system is adopted that is in excess of threshold amounts according to Article 15, the procurer shall preserve the relevant information that substantiates decisions taken in the procurement procedure, particularly as regards the following:

- a. The qualification assessment, the selection of a tenderer and the award of a contract.
- b. The use of contractual procurement without prior tender invitation notice, cf. Article 53.
- c. Not applying Articles 44, 45, 54-57 and 59-99 with reference to exemptions stated in chapters II and III.
- d. If necessary, the reasons for using other means of communication than electronic ones in the submission of tenders.

Inasmuch as a notice of a contract award according to Article 93 or paragraph 3, Article 101 contains information required according to this paragraph, the procurer is allowed to refer to such a notice.

The procurer shall record the progress of all procurement procedures, whether electronic or not. For that purpose, it shall see to it that adequate documents be preserved to substantiate decisions taken at all stages of the procurement procedure, such as documents on communications with operators and in-house discussion, the preparation of tender invitation documents, dialogues or contractual dialogues, if any, and the selection and drafting of a contract. The documents shall be preserved for not less than three years from the date of a decision on awarding an agreement.

The information, or the main elements thereof, shall be sent to the ministry or, as applicable, to the EFTA Surveillance Authority, if so requested.

## Article 105

*Reports on public procurement in excess of threshold amounts.*

The ministry shall prepare a report in accordance with Articles 99 and 101 of the Directive and send it to the EFTA Surveillance Authority. The minister is authorised to specify further which parties shall send individual procurement reports to the ministry and what shall appear in the reports.

## Article 106

*The investigation of the EFTA Surveillance Authority of procurement in excess of threshold amounts.*

The EFTA Surveillance Authority is authorised to resort to the procedure of paragraphs 2-4 if the Authority considers that, before a contract in excess of the threshold amounts of Article 15 has been awarded, the implementation of the procurement procedure under the Directive, as adopted in



the EEA Agreement, constitutes a serious contravention to the regulations of the EEA Agreement on public procurement. The minister shall represent the Icelandic State in such a process. For the purposes of handling such a case, the minister is authorised to temporarily halt a tender invitation or other procurement procedures, following the receipt of a notice from the EFTA Surveillance Authority.

The EFTA Surveillance Authority informs the Icelandic State of the reasons why the Authority considers that a serious violation has taken place and asks that it be appropriately corrected. No later than 21 days after the receipt of such a notice, the ministry shall send a confirmation to the Authority that the violation has been rectified, a substantiated report on the reasons for not having rectified the situation, or a notice on the procurement procedure and the award of a contract having been temporarily halted, whether at the initiative of the minister or before the Public Procurement Complaints Commission.

A report on the reasons why no corrections have taken place can be based on the fact that the violation is already under consideration by the Public Procurement Complaints Commission or before the courts or that the judgment of the Complaints Commission has been referred to the courts. In such circumstances, the ministry shall notify the EFTA Surveillance Authority on the conclusion of such a case as soon it is known.

When the temporary halt of a procurement procedure has been reported, cf. paragraph 2, the ministry shall inform the EFTA Surveillance Authority when the halt has been lifted or when the procedure for the same procurement, in part or whole, has been resumed. Such a notice shall contain a report of revisions having been made or reasons presented why it has not been done.

#### Article 107

##### *Adoption.*

With this Regulation, the Directive of the European Parliament and of the Council no. 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, as adopted into the EEA Agreement with the resolution of the EEA Joint Committee no. 97/2016 of 29 April 2016, is hereby adopted.

The Annexes of the Directive are published as supporting documents with this Regulation.

#### Article 108

##### Entry into effect.

This Regulation is issued according to paragraph 2, Article 9, Act no. 120/2016 on Public Procurement and takes effect forthwith.

At the same time as this Regulation enters into effect, Regulation no 755/2007 on procurement by entities operating the water, energy, transport and postal services sectors is cancelled.

Paragraph 1 notwithstanding, paragraphs 1 and 2, Article 47 take effect on 18 November 2018.

Paragraph 1 notwithstanding, the duty to jointly advertise on a joint tender website according to paragraph 1, Article 69 shall take effect on 15 June 2017.

The Ministry of Finance and Economic Affairs, 12 April 2017.

On behalf of the minister

**Sigurður H. Helgason**

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Hrafn Hlynsson

**Supporting document.**

ANNEX I  
**Register of activity.**

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

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— demolition of buildings and other structures,</li> <li>— clearing of building sites,</li> <li>— earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.</li> <li>— site preparation for mining:</li> <li>— overburden removal and other development and preparation of mineral properties and sites.</li> </ul> <p>This class also includes:</p> <ul style="list-style-type: none"> <li>— building site drainage.</li> <li>— drainage of agricultural or forestry land.</li> </ul>	45110000
		45.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.</li> </ul> <p>This class excludes:</p>	45120000

				<ul style="list-style-type: none"> <li>— drilling of production oil or gas wells, see 11.20.</li> <li>— water well drilling, see 45.25,</li> <li>— shaft sinking, see 45.25,</li> <li>— oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.</li> </ul>	
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> </ul>	<p>45210000</p> <p>Except:</p> <ul style="list-style-type: none"> <li>— 45213316</li> <li>45220000</li> <li>45231000</li> <li>45232000</li> </ul>

				<ul style="list-style-type: none"> <li>— building installation, see 45.3,</li> <li>— building completion, see 45.4,</li> <li>— architectural and engineering activities, see 74.20,</li> <li>— project management for construction, see 74.20.</li> </ul>	
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— erection of roofs,</li> <li>— roof covering,</li> <li>— waterproofing.</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>— construction of railways,</li> <li>— construction of airfield runways,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations,</li> <li>— painting of markings on road surfaces and car parks.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— preliminary earth moving, see 45.11.</li> </ul>	<p>45212212 and DA03 45230000 except: — 45231000 — 45232000 — 45234115</p>
		45.24	Construction of water projects	<p>This class includes</p> <ul style="list-style-type: none"> <li>— construction of:</li> <li>— waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</li> <li>— dams and dykes,</li> <li>— dredging,</li> <li>— subsurface work.</li> </ul>	45240000

		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>— construction of foundations, including pile driving,</li> <li>— water well drilling and construction, shaft sinking,</li> <li>— erection of non-self-manufactured steel elements,</li> <li>— steel bending,</li> <li>— bricklaying and stone setting,</li> <li>— scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>— erection of chimneys and industrial ovens.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	45250000 45262000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> <li>— electrical wiring and fittings,</li> <li>— telecommunications systems,</li> <li>— electrical heating systems,</li> <li>— residential antennas and aerials,</li> <li>— fire alarms,</li> <li>— burglar alarm systems,</li> <li>— lifts and escalators,</li> </ul>	45213316 45310000 Except: — 45316000

				— lightning conductors, etc.	
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	45330000
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes:</p>	45420000

				<ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of:</li> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul>	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— interior and exterior painting of buildings,</li> <li>— painting of civil engineering structures,</li> <li>— installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— installation of windows, see 45.42,</li> </ul>	45440000
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— installation of private swimming pools,</li> <li>— steam cleaning, sand blasting and similar activities for building exteriors,</li> </ul>	45212212 and DA04 45450000

				— other building completion and finishing work n.e.c.  This class excludes:  — interior cleaning of buildings and other structures, see 74.70.	
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes:  — renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

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<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 ([OJ L 293, 24.10.1990, p. 1](#)).

## ANNEX II

### LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 4(3)

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria do not constitute 'special or exclusive rights' within the meaning of Article 4 of this Directive. The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legal acts of the Union which do not constitute 'special or exclusive rights' within the meaning of Article 4 of this Directive:

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



procedure in accordance with Article 5(3) thereof, provided that its length is in conformity with Article 4(3) or (4) of that Regulation.

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### ANNEX III

#### LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 34(3)

##### A. Transport or distribution of gas or heat

Directive 2009/73/EC

##### B. Production, transmission or distribution of electricity

Directive 2009/72/EC

##### C. Production, transport or distribution of drinking water

[No entry]

##### D. Contracting entities in the field of rail services

Rail freight transport

Directive 2012/34/EU

International rail passenger transport

Directive 2012/34/EU

National rail passenger transport

[No entry]

##### E. Contracting entities in the field of urban railway, tramway, trolleybus or motor bus services

[No entry]

##### F. Contracting entities in the field of postal services

Directive 97/67/EC

##### G. Extraction of oil or gas

Directive 94/22/EC

##### H. Exploration for and extraction of coal or other solid fuels

[No entry]

##### I. Contracting entities in the field of seaport or inlandport or other terminal equipment

[No entry]

##### J. Contracting entities in the field of airport installations

[No entry]

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### ANNEX IV

#### DEADLINES FOR THE ADOPTION OF THE IMPLEMENTING ACTS REFERRED TO IN ARTICLE 35

1. The implementing acts referred to in Article 35 shall be adopted within the following periods:
  - (a) 90 working days where free access to a given market is presumed on the basis of the first subparagraph of Article 34(3);
  - (b) 130 working days in cases other than those referred to in point (a).

The periods set out in points (a) and (b) of this paragraph shall be prolonged by 15 working days where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the conditions for the possible applicability of Article 34(1) to the activity concerned in accordance with Article 34(2) and (3).

Those deadlines shall commence on the first working day following the date on which the Commission receives the request referred to in Article 35(1) or, where the information to be supplied with the request is incomplete, on the working day following the receipt of the complete information.

The periods set out in the first subparagraph may be extended by the Commission with the agreement of the Member State or contracting entity which has presented the request.

2. The Commission may require the Member State or the contracting entity concerned or the independent national authority referred to under paragraph 1 or any other competent national authority to provide all necessary information or to supplement or clarify information given within an appropriate time limit. In the event of late or incomplete answers, the periods set out in the first subparagraph of paragraph 1 shall be suspended for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information.

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## ANNEX V

### REQUIREMENTS RELATING TO TOOLS AND DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS

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

- (a) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;
- (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under those requirements;
- (c) only authorised persons may set or change the dates for opening data received;
- (d) during the various stages of the qualification procedure, the procurement procedure or contest, access to all data submitted, or to part thereof, must be possible only for authorised persons;
- (e) only authorised persons must give access to data transmitted and only after the prescribed date;
- (f) data received and opened in accordance with those requirements must remain accessible only to persons authorised to acquaint themselves therewith,

- (g) where the access prohibitions or conditions referred to under points (b) to (f) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.

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## ANNEX VI

### PART A

#### INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE

(as referred to in Article 67)

##### I. Information to be included in all cases

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3.
  - (a) For supply contracts: nature and quantity or value of the services or products to be supplied (CPV codes).
  - (b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (CPV codes).
  - (c) For service contracts: intended total procurement in each of the service categories envisaged (CPV codes).
4. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.
5. Any other relevant information.

##### II. Additional information to be supplied where the notice is used as a means of calling for competition or permits the reduction of the time limits for the receipt of tenders (article 67(2))

6. A reference to the fact that interested economic operators shall advise the entity of their interest in the contract or contracts.
7. E-mail or internet address at which the specifications procurement documents will be available for unrestricted and full direct access, free of charge.  
Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the third and fourth subparagraph of Article 73(1), an indication of how the procurement documents can be accessed.
8. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
9. Time limit for the receipt of applications for an invitation to tender or to negotiate.
10. Nature and quantity of the products to be supplied or general nature of the work or category of service and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts,

also, an estimate of the timing of the subsequent calls for competition. State whether purchase, lease, rental or hire-purchase or any combination of those is involved.

11. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service; if the contract is divided into lots, this information shall be provided for each lot.
12. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
13. Address to which interested undertakings shall send their expressions of interest in writing.
14. Time limit for receipt of expressions of interest.
15. Language or languages authorised for the presentation of candidatures or tenders.
16. Economic and technical conditions, and financial and technical guarantees required of suppliers.
17.
  - (a) Estimated date for initiating the procurement procedures in respect of the contract or contracts (if known);
  - (b) Type of procurement procedure (restricted procedures, whether or not involving a dynamic purchasing system, or negotiated procedures).
18. Where appropriate, particular conditions to which the performance of the contract is subject.
19. Where appropriate, indication whether:
  - (a) electronic submission of tenders or requests to participate will be required/accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be used,
  - (d) electronic payment will be accepted.
20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
21. Where known, criteria referred to in Article 82 to be used for award of the contract: Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in point (b) of Article 67(2) or in the invitation tender or to negotiate.

## **PART B**

### **INFORMATION TO BE INCLUDED IN NOTICES OF PUBLICATION OF A PERIODIC INDICATIVE NOTICE ON A BUYER PROFILE NOT USED AS A MEANS OF CALLING FOR COMPETITION**

(as referred to in Article 67(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. CPV Codes.
4. Internet address of the 'buyer profile' (URL).
5. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.

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## ANNEX VII

### INFORMATION TO BE INCLUDED IN THE PROCUREMENT DOCUMENTS RELATING TO ELECTRONIC AUCTIONS (ARTICLE 53(4))

Where contracting entities have decided to hold an electronic auction, the procurement documents shall include at least the following details:

- (a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

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## ANNEX VIII

### DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive,

- (1) 'technical specification' means one of the following:
  - (a) in the case of service or supply contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the

product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

- (b) in the case of works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
- (2) ‘standard’ means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:
- (a) ‘international standard’ means a standard adopted by an international standardisation organisation and made available to the general public,
- (b) ‘European standard’ means a standard adopted by a European standardisation organisation and made available to the general public,
- (c) ‘national standard’ means a standard adopted by a national standardisation organisation and made available to the general public;
- (3) ‘European Technical Assessment’ means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council <sup>(1)</sup>;
- (4) ‘common technical specification’ means a technical specification in the field of ICT laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012;
- (5) ‘technical reference’ means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

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<sup>(1)</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

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## ANNEX IX

### FEATURES CONCERNING PUBLICATION

#### 1. Publication of notices

The notices referred to in Articles 67, 68, 69, 70, 92 and 96 must be sent by the contracting entities to the Publications Office of the European Union and published in accordance with the following rules:

- (a) Notices referred to in Articles 67, 68, 69, 70, 92 and 96 shall be published by the Publications Office of the European Union or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with Article 67(1).

In addition, contracting entities may publish this information on the internet on a 'buyer profile' as referred to in point 2(b) below;

- (b) The Publications Office of the European Union will give the contracting entity the confirmation referred to in the second subparagraph of Article 71(5).

## 2. Publication of complementary or additional information

- (a) Except where otherwise provided for in the third and fourth subparagraph of Article 73(1), contracting entities shall publish the procurement documents in their entirety on the internet;

- (b) The buyer profile may include periodic indicative notices as referred to in Article 67(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address. The buyer profile may also include periodic indicative notices used as a means of calling for competition, which are published at national level pursuant to Article 72.

## 3. Format and procedures for the electronic transmission of notices

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

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## ANNEX X

### INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

(as referred to in point (b) of Article 44(4) and in Article 68)

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Purpose of the qualification system (description of the products, services or works or categories thereof to be procured through the system — CPV codes). NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
5. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and

verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.

6. Period of validity of the qualification system and the formalities for its renewal.
7. Reference to the fact that the notice acts as the call for competition.
8. Address where further information and documentation concerning the qualification system can be obtained (where different from the addresses mentioned under point (1)).
9. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
10. Where known, criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
11. Where appropriate, indication whether:
  - (a) electronic submission of tenders or requests to participate will be required/accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be used,
  - (d) electronic payment will be accepted.
12. Any other relevant information.

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## ANNEX XI

### INFORMATION TO BE INCLUDED IN CONTRACT NOTICES

(as referred to in Article 69)

#### A. OPEN PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.



4. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system), description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (b) indication of whether the suppliers may tender for some and/or all the products required.  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
7. For services:
  - (a) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
9. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
10. E-mail or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the third and fourth subparagraph of Article 73(1), an indication of how the procurement documents can be accessed.

11. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;  
(b) Address to which they shall be sent;  
(c) Language or languages in which they shall be drawn up.
12. (a) Where applicable, the persons authorised to be present at the opening of tenders;  
(b) Date, time and place of such opening.
13. Where applicable, any deposits and guarantees required.
14. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
15. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
16. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.
17. Period during which the tenderer is bound to keep open his tender.
18. Where appropriate, particular conditions to which the performance of the contract is subject.
19. Criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications.
20. Where appropriate, date(s) and the reference(s) to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
21. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
22. Date of dispatch of the notice by the contracting entity.
23. Any other relevant information.

## B. RESTRICTED PROCEDURES

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.

3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement); description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) The nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (b) Indication of whether the suppliers may tender for some and/or all the products required.  
  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
7. For services:
  - (a) The nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference to the law, regulation or administrative provision;
  - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.
10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

11.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they shall be sent;
  - (c) Language or languages in which they shall be drawn up.
12. Final date for dispatch of invitations to tender.
13. Where applicable, any deposits and guarantees required.
14. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
15. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
16. Criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to tender.
17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the date(s) and reference(s) to publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entities.
21. Any other relevant information.

### C. NEGOTIATED PROCEDURES

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

5. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) The nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (b) Indication of whether the suppliers may tender for some and/or all the products required.  
  
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
7. For services:
  - (a) The nature and quantity of the services to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) Reference of the law, regulation or administrative provision;
  - (d) Indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) Indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.
10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
11.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they shall be sent;
  - (c) Language or languages in which they shall be drawn up.

12. Where appropriate, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the provisions in which those are contained.
14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.
15. Criteria referred to in Article 82 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
16. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the dates and reference(s) of publication in the *Official Journal of the European Union* of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
20. Date of dispatch of the notice by the contracting entity.
21. Any other relevant information.

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## ANNEX XII

### INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE

(as referred to in Article 70)

#### I. Information for publication in the *Official Journal of the European Union* <sup>(1)</sup>

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Nature of the contract (supplies, works or services and CPV codes; where appropriate state if it is a framework agreement).
4. At least a summary indication of the nature and quantity of the products, works or services provided.
5. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);

- (b) Date(s) and reference(s) of publication of the notice in the *Official Journal of the European Union*;
  - (c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 50.
6. Procurement procedure (open, restricted or negotiated).
7. Number of tenders received, specifying
- (a) number of tenders received from economic operators which are SMEs,
  - (b) number of tenders received from abroad,
  - (c) number of tenders received electronically.
- In the case of multiple awards (lots, multiple framework agreements), this information shall be given for each award.
8. Date of the conclusion of the contract(s) or of the framework agreement(s) following the decision to award or conclude it/them.
9. Price paid for bargain purchases pursuant to Article 50(h).
10. For each award, name, address including NUTS code, telephone, fax number, e-mail address and internet address of the successful tenderer(s) including:
- (a) information whether the successful tenderer is an SME,
  - (b) information whether the contract was awarded to a consortium.
11. State, where appropriate, whether the contract has been, or may be, subcontracted.
12. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
14. Optional information:
- value and share of the contract which has been or may be subcontracted to third parties,
  - award criteria.

## II. Information not intended for publication

15. Number of contracts awarded (where an award has been split between several suppliers).
16. Value of each contract awarded.
17. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).

18. Which award criteria were used?
19. Was the contract awarded to a tenderer who submitted a variant, in accordance with Article 64(1)?
20. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 84?
21. Date of transmission of the notice by the contracting entity.

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<sup>(1)</sup> Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

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### ANNEX XIII

#### CONTENTS OF THE INVITATIONS TO SUBMIT A TENDER, PARTICIPATE IN THE DIALOGUE, TO NEGOTIATE OR TO CONFIRM INTEREST PROVIDED FOR UNDER ARTICLE 74

1. The invitation to submit a tender, to participate in the dialogue or to negotiate provided for under Article 74 must contain at least:
  - (a) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;
 

However, in the case of contracts awarded through a competitive dialogue or an innovation partnership, this information shall not appear in the invitation to negotiate but it shall appear in the invitation to submit a tender.
  - (b) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
  - (c) a reference to any published call for competition;
  - (d) an indication of any documents to be attached;
  - (e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;
  - (f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.
2. When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

This invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising those options for renewable contracts, the nature and quantity and, if possible, the



estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

- (b) type of procedure: restricted or negotiated;
- (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- (e) the address of the contracting entity;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;
- (g) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of those; and
- (h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

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#### ANNEX XIV

##### LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 36(2)

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

- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.

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#### ANNEX XV

#### LIST OF UNION LEGAL ACTS REFERRED TO IN ARTICLE 83(3)

Directive 2009/33/EC of the European Parliament and of the Council.

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#### ANNEX XVI

#### INFORMATION TO BE INCLUDED IN NOTICES OF MODIFICATIONS OF A CONTRACT DURING ITS TERM

(as referred to in Article 89(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. CPV codes.
4. NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in supplies and service.
5. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
6. Where applicable, increase in price caused by the modification.
7. Description of the circumstances which have rendered necessary the modification.
8. Date of contract award decision.
9. Where applicable, the name, address including NUTS code, telephone, fax number, e-mail address and internet address of the new economic operator or operators.
10. Information whether the contract is related to a project and/or programme financed by Union funds.
11. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

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#### ANNEX XVII

#### SERVICES REFERRED TO IN ARTICLE 91

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5 and; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services]	Health and social and related services
85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion shows organisation services], 79956000-0 [Fair and exhibition organisation services]	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services <sup>(1)</sup>
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3, 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55510000-8 [Canteen services], 55511000-5 [Canteen and other restricted-clientele cafeteria services], 55512000-2 [Canteen management services], 55523100-3 [School-meal services], 55520000-1 [Catering services], 55522000-5 [Catering services for transport enterprises], 55523000-2 [Catering services for other enterprises or other institutions], 55524000-9 [School catering services]	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded pursuant to Article 21(c)

75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services, to the extent not excluded pursuant to Article 21(h)
79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1 [Graphology services], 79723000-8 [Waste analysis services]	Investigation and security services
98900000-2 [Services provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies]	International services
64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]	Postal services
50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services]	Miscellaneous services

<sup>(1)</sup> These services are not covered by the present Directive where they are organised as non-economic services of general interest. Member States are free to organise the provision of compulsory social services or of other services as services of general interest or as non-economic services of general interest.

## ANNEX XVIII

### INFORMATION TO BE INCLUDED IN NOTICES CONCERNING CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES

(as referred to in Article 92)

#### Part A Contract notice

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, CPV codes.

4. NUTS code for the main place of performance of the services.
5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.
7. Time limit(s) for contacting the contracting entity in view of participation.
8. Any other relevant information.

**Part B Periodic indicative notice**

1. Name, identification number (where provided for in national legislation), address including NUTS code, e-mail and internet address of the contracting entity.
2. Brief description of the contract in question including CPV codes.
3. As far as already known:
  - (a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,
  - (b) time-frame for delivery or provision of supplies, works or services and duration of the contract,
  - (c) conditions for participation, including:
    - where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
    - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (d) brief description of the main features of the award procedure to be applied.
4. A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

**Part C Notice on the existence of a qualification system**

1. Name, identification number (where provided for in national legislation), address including NUTS code, e-mail and internet address of the contracting entity.
2. Brief description of the contract in question including CPV codes.
3. As far as already known:
  - (a) NUTS code for the main location of works in case of works or NUTS code for the main place of delivery or performance in case of supplies and services,

- (b) time-frame for delivery or provision of supplies, works or services and duration of the contract,
  - (c) conditions for participation, including:
    - where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
    - where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession,
  - (d) brief description of the main features of the award procedure to be applied.
4. A reference to the fact that interested economic operators shall advise the contracting entity of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.
  5. Period of validity of the qualification system and the formalities for its renewal.

#### Part D Contract award notice

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.
4. Reference of publication of the notice in the *Official Journal of the European Union*.
5. Number of tenders received.
6. Name and address of the chosen economic operator(s).
7. Any other relevant information.

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#### ANNEX XIX

#### INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE

(as referred to in Article 96(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Project description (CPV codes).

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

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## ANNEX XX

### INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES

(as referred to in Article 96(1))

1. Name, identification number (where provided for in national legislation), address including NUTS code, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Project description (CPV codes).

4. Total number of participants.
5. Number of foreign participants.
6. Winner(s) of the contest.
7. Where applicable, the prize(s).
8. Other information.
9. Reference of the design contest notice.
10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.