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**COUNCIL DIRECTIVE 92/50/EEC  
of 18 June 1992**

**relating to the coordination of procedures for the award of public service contracts**

(OJ L 209, 24.7.1992, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Council Directive 93/36/EEC of 14 June 1993	L 199	1	9.8.1993
► <u>M2</u>	European Parliament and Council Directive 97/52/EC of 13 October 1997	L 328	1	28.11.1997

Amended by:

► <u>A1</u>	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



**COUNCIL DIRECTIVE 92/50/EEC**

**of 18 June 1992**

**relating to the coordination of procedures for the award of public service contracts**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Article 57 (2) and Article 66 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

In cooperation with the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas the European Council has drawn conclusions on the need to complete the internal market;

Whereas measures aimed at progressively establishing the internal market during the period up to 31 December 1992 need to be taken; whereas the internal market is an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas these objectives require the coordination of the procurement procedures for the award of public service contracts;

Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement, including in the field of services insofar as this is not already covered by Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts<sup>(4)</sup> and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts<sup>(5)</sup>;

Whereas this Directive should be applied by all contracting authorities within the meaning of Directive 71/305/EEC;

Whereas obstacles to the free movement of services need to be avoided; whereas, therefore, service providers may be either natural or legal persons; whereas this Directive shall not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession provided that they are compatible with Community law;

Whereas the field of services is best described, for the purpose of application of procedural rules and for monitoring purposes, by subdividing it into categories corresponding to particular positions of a common classification; whereas Annexes I A and I B of this Directive refer to the CPC nomenclature (common product classification) of the United Nations; whereas that nomenclature is likely to be replaced in the future by Community nomenclature; whereas provision should be made for adapting the CPC nomenclature in Annexes I A and B in consequence;

Whereas the provision of services is covered by this Directive only in so far as it is based on contracts; whereas the provision of services on

<sup>(1)</sup> OJ No C 23, 31. 1. 1991, p. 1, and OJ No C 250, 25. 9. 1991, p. 4.

<sup>(2)</sup> OJ No C 158, 17. 6. 1991, p. 90, and OJ No C 150, 15. 6. 1992.

<sup>(3)</sup> OJ No C 191, 22. 7. 1991, p. 41.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 5. Directive last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

<sup>(5)</sup> OJ No L 13, 15. 1. 1977, p. 1. Directive last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

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other bases, such as law or regulations, or employment contracts, is not covered;

Whereas, in accordance with Article 130f of the Treaty, the encouragement of research and development is a means to strengthen the scientific and technological basis of European industry and the opening up of public contracts will contribute to this end; whereas contributions to the financing of research programmes should not be subject to this Directive; whereas research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, are not therefore covered by this Directive;

Whereas contracts relating to the acquisition or rental of immovable property or to rights thereon have particular characteristics, which make the application of procurement rules inappropriate;

Whereas the award of contracts for certain audiovisual services in the broadcasting field is governed by considerations which make the application of procurement rules inappropriate;

Whereas arbitration and conciliation services are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules;

Whereas for the purposes of this Directive financial services do not include the instruments of monetary, exchange rate, public debt, reserve management, and other policies involving transactions in securities and other financial instruments; whereas, therefore, contracts in connection with the issue, sale, purchase or transfer of securities and other financial instruments are not covered by this Directive; whereas central bank services are also excluded;

Whereas, in the field of services, the same derogations as in Directives 71/305/EEC and 77/62/EEC should apply as regards State security or secrecy and the priority of other procurement rules such as those pursuant to international agreements, those concerning the stationing of troops, or the rules of international organizations;

Whereas this Directive does not prejudice the application of, in particular, Articles 55, 56 and 66 of the Treaty;

Whereas public service contracts, particularly in the field of property management, may from time to time include some works; whereas it results from Directive 71/305/EEC that, for a contract to be a public works contract, its object must be the achievement of a work; whereas, in so far as these works are incidental rather than the object of the contract, they do not justify treating the contract as a public works contract;

Whereas the rules concerning service contracts as contained in Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors<sup>(1)</sup> should remain unaffected by this Directive;

Whereas contracts with a designated single source of supply may, under certain conditions, be fully or partly exempted from this Directive;

Whereas this Directive should not apply to small contracts below a certain threshold in order to avoid unnecessary formalities; whereas this threshold may in principle be the same as that for public supply contracts; whereas the calculation of the contract value, the publication and the method of adaptation of the thresholds should be the same as in the other Community procurement directives;

Whereas, to eliminate practices that restrict competition in general and participation in contracts by other Member States' nationals in parti-

<sup>(1)</sup> OJ No L 297, 29. 10. 1990, p. 1.

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cular, it is necessary to improve the access of service providers to procedures for the award of contracts;

Whereas full application of this Directive must be limited, for a transitional period, to contracts for those services where its provisions will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before a decision is taken on the full application of this Directive; whereas the mechanism for such monitoring needs to be defined; whereas this mechanism should at the same time enable those interested to share the relevant information;

Whereas the rules for the award of public service contracts should be as close as possible to those concerning public supply contracts and public works contracts;

Whereas the procurement rules contained in Directives 71/305/EEC and 77/62/EEC can be appropriate, with necessary adaptations so as to take into account special aspects of procurement of services such as the choice of the negotiated procedure, design contests, variants, the legal form under which the service providers operate, the reservation of certain activities to certain professions, registration and quality assurance;

Whereas use may be made of the negotiated procedure with prior publication of a notice when the service to be provided cannot be specified with sufficient precision, particularly in the field of intellectual services, with the result that such a contract cannot be awarded by selection of the best tender in accordance with the rules governing the open and restricted procedures;

Whereas the relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in an award procedure or a design contest;

Whereas the objectives of this Directive do not require any changes in the current situation at national level as regards price competition between service providers of certain services;

Whereas the operation of this Directive should be reviewed at the latest three years after the date set for procurement rules to be transposed into national law; whereas the review should extend in particular to the possibility of making the Directive fully applicable to a wider range of service contracts,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

**General provisions***Article 1*

For the purposes of this Directive:

- (a) *public service contracts* shall mean contracts for pecuniary interest concluded in writing between a service provider and a contracting authority, to the exclusion of:
- (i) public supply contracts within the meaning of Article 1 (a) of Directive 77/62/EEC or public works contracts within the meaning of Article 1 (a) of Directive 71/305/EEC;
  - (ii) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC or fulfilling the conditions in Article 6 (2) of the same Directive;
  - (iii) contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

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- (iv) contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
  - (v) contracts for voice telephony, telex, radiotelephony, paging and satellite services;
  - (vi) contracts for arbitration and conciliation services;
  - (vii) contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services;
  - (viii) employment contracts;
  - (ix) research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;
- (b) *contracting authorities* shall mean the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law.

*Body governed by public law* means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- having legal personality and
- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph of this point are set out in Annex I to Directive 71/305/EEC. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 30b of that Directive;

- (c) *service provider* shall mean any natural or legal person, including a public body, which offers services. A service provider who submits a tender shall be designated by the term *tenderer* and one who has sought an invitation to take part in a restricted or negotiated procedure by the term *candidate*;
- (d) *open procedures* shall mean those national procedures whereby all interested service providers may submit a tender;
- (e) *restricted procedures* shall mean those national procedures whereby only those service providers invited by the authority may submit a tender;
- (f) *negotiated procedures* shall mean those national procedures whereby authorities consult service providers of their choice and negotiate the terms of the contract with one or more of them;
- (g) *design contests* shall mean those national procedures which enable the contracting authority to acquire, mainly in the fields of area planning, town planning, architecture and civil engineering, or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

#### *Article 2*

If a public contract is intended to cover both products within the meaning of Directive 77/62/EEC and services within the meaning of Annexes I A and I B to this Directive, it shall fall within the scope of this Directive if the value of the services in question exceeds that of the products covered by the contract.

**▼B***Article 3*

1. In awarding public service contracts or in organizing design contests, contracting authorities shall apply procedures adapted to the provisions of this Directive.
2. Contracting authorities shall ensure that there is no discrimination between different service providers.
3. Member States shall take the necessary measures to ensure that the contracting authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50 % a service contract awarded by an entity other than themselves in connection with a works contract within the meaning of Article 1a (2) of Directive 71/305/EEC.

*Article 4*

1. This Directive shall apply to public service contracts awarded by contracting authorities in the field of defence, except for contracts to which the provisions of Article 223 of the Treaty apply.
2. This Directive shall not apply to services which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires.

*Article 5*

This Directive shall not apply to public contracts governed by different procedural rules and awarded:

- (a) in pursuance of an international agreement concluded between a Member State and one or more third countries and covering services intended for the joint implementation or exploitation of a project by the signatory States; any agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC<sup>(1)</sup>;
- (b) to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

*Article 6*

This Directive shall not apply to public service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 1 (b) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

*Article 7***▼M2**

1. (a) This Directive shall apply to:
  - public service contracts referred to in Article 3 (3), public service contracts concerning the services referred to in Annex I B, the services in category 8 in Annex I A and the telecommunications services in category 5 of Annex I A under CPC references 7524, 7525 and 7526, awarded by the contracting authorities referred to in Article 1 (b), where the estimated net value of value-added tax (VAT) is not less than ECU 200 000,

<sup>(1)</sup> OJ No L 185, 16. 8. 1971, p. 15. Decision amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

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— public service contracts concerning the services referred to in Annex I A with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526:

- (i) awarded by the contracting authorities listed in Annex I to Directive 93/36/EEC where the estimated value net of VAT is not less than the equivalent in ecus of 130 000 special drawing rights (SDRs);
- (ii) awarded by the contracting authorities listed in Article 1 (b) other than those referred to in Annex I to Directive 93/36/EEC and where the estimated value net of VAT is not less than the equivalent in ecus of 200 000 SDRs.

(b) The value in ecus and in national currencies of the thresholds laid down in subparagraph (a) shall, in principle, be revised every two years with effect from 1 January 1996. The calculation of these values shall be based on the average daily values of these currencies expressed in ecus and of the ecus expressed in SDRs over the 24 months terminating on the last day of August preceding the 1 January revision.

The method of calculation laid down in this subparagraph shall be reviewed, on a proposal from the Commission, by the advisory Committee for Public Procurement, in principle two years after its initial application.

(c) The thresholds laid down in subparagraph (a) and the values of the thresholds expressed in ecus and in national currencies shall be published in the *Official Journal of the European Communities* at the beginning of the month of November which follows the revision laid down in the first paragraph of subparagraph (b).

2. For the purposes of calculating the estimated value of the contract, the contracting authority shall include the estimated total remuneration of the service provider, taking account of the provisions of paragraphs 3 to 7.

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3. The selection of the valuation method shall not be used with the intention of avoiding the application of this Directive, nor shall any procurement requirement for a given amount of services be split up with the intention of avoiding the application of this Article.

4. For the purposes of calculating the estimated contract value for the following types of services, account shall be taken, where appropriate:

- as regards insurance services, of the premium payable,
- as regards banking and other financial services, of fees, commissions and interest as well as other types of remuneration,
- as regards contracts which involve design, of the fee or commission payable.

Where the services are subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amount referred to above.

Where the value of the lots is not less than this amount, the provisions of this Directive shall apply to all lots. Contracting authorities may waive application of paragraph 1 for any lot which has an estimated value net of VAT of less than ECU 80 000, provided that the total value of such lots does not exceed 20 % of the total value of all the lots.

5. In the case of contracts which do not specify a total price, the basis for calculating the estimated contract value shall be:

- in the case of fixed-term contracts, where their term is 48 months or less, the total contract value for its duration;
- in the case of contracts of indefinite duration or with a term of more than 48 months, the monthly instalment multiplied by 48.

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6. In the case of regular contracts or of contracts which are to be renewed within a given time, the contract value may be established on the basis of:

- either the actual aggregate cost of similar contracts for the same categories of services awarded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract,
- or the estimated aggregate cost during the twelve months following the first service performed or during the term of the contract, where this is greater than 12 months.

7. Where a proposed contract provides for options, the basis for calculating the contract value shall be the maximum permitted total including use of the option clauses.

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## TITLE II

**Two-tier application***Article 8*

Contracts which have as their object services listed in Annex I A shall be awarded in accordance with the provisions of Titles III to VI.

*Article 9*

Contracts which have as their object services listed in Annex I B shall be awarded in accordance with Articles 14 and 16.

*Article 10*

Contracts which have as their object services listed in both Annexes I A and I B shall be awarded in accordance with the provisions of Titles III to VI where the value of the services listed in Annex I A is greater than the value of the services listed in Annex I B. Where this is not the case, they shall be awarded in accordance with Articles 14 and 16.

## TITLE III

**Choice of award procedures and rules governing design contests***Article 11*

1. In awarding public service contracts, contracting authorities shall apply the procedures defined in Article 1 (d), (e) and (f), adapted for the purposes of this Directive.

2. Contracting authorities may award their public service contracts by negotiated procedure, with prior publication of a contract notice in the following cases:

- (a) in the event of irregular tenders in response to an open or restricted procedure or in the event of tenders which are unacceptable under national provisions that are in accordance with Articles 23 to 28, insofar as the original terms of the contract are not substantially altered. Contracting authorities may in such cases refrain from publishing a contract notice where they include in the negotiated procedure all the tenderers who satisfy the criteria of Articles 29 to 35 and who, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure;
- (b) in exceptional cases, when the nature of the services or the risks involved do not permit prior overall pricing;
- (c) when the nature of the services to be procured, in particular in the case of intellectual services and services falling within category 6 of Annex I A, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract



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by selecting the best tender according to the rules governing open or restricted procedures.

3. Contracting authorities may award public service contracts by negotiated procedure without prior publication of a contract notice in the following cases:

- (a) in the absence of tenders or of appropriate tenders in response to an open or restricted procedure provided that the original terms of the contract are not substantially altered and that a report is communicated to the Commission at its request;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services may be provided only by a particular service provider;
- (c) where the contract concerned follows a design contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates. In the latter case, all successful candidates shall be invited to participate in the negotiations;
- (d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures referred to in Articles 17 to 20 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities;
- (e) for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the service described therein, on condition that the award is made to the service provider carrying out such service:
  - when such additional services cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities, or
  - when such services, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate estimated value of contracts awarded for additional services may not exceed 50 % of the amount of the main contract;

- (f) for new services consisting in the repetition of similar services entrusted to the service provider to which the same contracting authorities awarded an earlier contract, provided that such services conform to a basic project for which a first contract was awarded according to the procedures referred to in paragraph 4. As soon as the first project is put up for tender, notice must be given that the negotiated procedure might be adopted and the total estimated cost of subsequent services shall be taken into consideration by the contracting authorities when they apply the provisions of Article 7. This procedure may be applied solely during the three years following the conclusion of the original contract.

4. In all other cases, the contracting authorities shall award their public service contracts by the open procedure or by the restricted procedure.

*Article 12*

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1. The contracting authority shall, within 15 days of the date on which a written request is received, inform any eliminated candidate or tenderer of the reasons for rejection of his application or his tender, and any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer.

However, contracting authorities may decide that certain information on the contract award, referred to in the first subparagraph be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the

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legitimate commercial interests of particular undertakings, public or private, or might prejudice fair competition between service providers.

2. Contracting authorities shall promptly inform candidates and tenderers of the decisions taken on contract awards, including the reasons why they have decided not to award a contract for which there has been an invitation to tender or to start the procedure again and, shall do so in writing if required. They shall also inform the Office for Official Publications of the European Communities of such decisions.

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3. For each contract awarded, the contracting authorities shall draw up a written report which shall include at least the following:

- the name and address of the contracting authority, the subject and value of the contract,
- the names of the candidates or tenderers admitted and the reasons for their selection,
- the names of the candidates or tenderers rejected and the reasons for their rejection,
- the name of the successful tenderer and the reasons why his tender was selected and, if known, the part of the contract which the successful tenderer intends to subcontract to third parties,
- for negotiated procedures, the circumstances referred to in Article 11 which justify the use of these procedures.

This report, or the main features of it, shall be communicated to the Commission at its request.

*Article 13***▼M2**

1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract whose estimated value net of VAT is not less than:

- the threshold laid down in the first indent of Article 7 (1) (a), as regards the services referred to in Annex I B, the services in category 8 in Annex I A and the telecommunications services in category 5 of Annex I A under CPC references 7524, 7525 and 7526, awarded by the contracting authorities referred to in Article 1 (b), or
- the threshold laid down in (i) of the second indent of Article 7 (1) (a), as regards the services referred to in Annex I A with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526, awarded by the contracting authorities listed in Annex I to Directive 93/36/EEC, or
- the threshold laid down in (ii) of the second indent of Article 7 (1) (a), as regards the services referred to in Annex I A with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526, awarded by the contracting authorities listed in Article 1 (b) other than those referred to in Annex I to Directive 93/36/EEC.

2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than:

- the threshold laid down in Article 7 (1) (a), first indent, as regards the services referred to in Annex I B, the services in category 8 in Annex I A and the telecommunications services in category 5 of Annex I A under CPC references 7524, 7525 and 7526, awarded by the contracting authorities referred to in Article 1 (b), or
- the threshold laid down in (i) of the second indent of Article 7 (1) (a), as regards the services referred to in Annex I A with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526, awarded by the contracting authorities listed in Annex I to Directive 93/36/EEC, or

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- the threshold laid down in (ii) of the second indent of Article 7 (1) (a), as regards the services referred to in Annex I A with the exception of the services in category 8 and the telecommunications services in category 5 under CPC references 7524, 7525 and 7526, awarded by the contracting authorities listed in Article 1 (b) other than those referred to in Annex I to Directive 93/36/EEC.

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3. The rules for the organization of a design contest shall be in conformity with the requirements of this Article and shall be communicated to those interested in participating in the contest.

4. The admission of participants to design contests shall not be limited:

- by reference to the territory or part of the territory of a Member State,
- on the grounds that, under the law of the Member State in which the contest is organized, they would have been required to be either natural or legal persons.

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

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

The jury shall be autonomous in its decisions or opinions. These shall be reached on the basis of projects submitted anonymously and solely on the grounds of the criteria indicated in the notice within the meaning of Article 15 (3).

## TITLE IV

**Common rules in the technical field***Article 14*

1. The technical specifications defined in Annex II shall be given in the general documents or the contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules and insofar as these are compatible with Community law, such technical specifications shall be defined by the contracting authorities by reference to national standards implementing European standards or by reference to European technical approvals or by reference to common technical specifications.

3. A contracting authority may depart from paragraph 2 if:

- (a) the standards, European technical approvals or common technical specifications do not include any provisions for establishing conformity, or technical means do not exist for establishing satisfactorily the conformity of a product with these standards, European technical approvals or common technical specifications;
- (b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment<sup>(1)</sup>, or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications<sup>(2)</sup> or other Community instruments in specific service or product areas;

<sup>(1)</sup> OJ No L 217, 5. 8. 1986, p. 21. Amended by Directive 91/263/EEC (OJ No L 128, 23. 5. 1991, p. 1).

<sup>(2)</sup> OJ No L 36, 7. 2. 1987, p. 31.

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- (c) these standards, European technical approvals or common technical specifications would oblige the contracting authority to use products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to the transition, with a given period, to European standards, European technical approvals or common technical specifications;
- (d) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

4. Contracting authorities invoking paragraph 3 shall record, wherever possible, the reasons for doing so in the contract notice published in the *Official Journal of the European Communities* or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

5. In the absence of European standards or European technical approvals or common technical specifications, the technical specifications:

- (a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Directive 89/106/EEC<sup>(1)</sup>;
- (b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;
- (c) may be defined by reference to other documents.

In this case, it is appropriate to make reference in order of preference to:

- (i) national standards implementing international standards accepted by the country of the contracting authority;
- (ii) other national standards and national technical approvals of the country of the contracting authority;
- (iii) any other standard.

6. Unless it is justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain service providers. In particular, the indication of trade marks, patents, types, or of specific origin or production shall be prohibited. However, if such indication is accompanied by the words 'or equivalent', it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

## TITLE V

**Common advertising rules***Article 15*

1. Contracting authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement in each of the service categories listed in Annex I A which they envisage awarding during the subsequent 12 months where the total estimated value,

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 12.

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taking account of the provisions of Article 7, is not less than ECU 750 000.

2. Contracting authorities who wish to award a public service contract by open, restricted or, under the conditions laid down in Article 11, negotiated procedure, shall make known their intention by means of a notice.

3. Contracting authorities who wish to carry out a design contest shall make known their intention by means of a notice.

*Article 16*

1. Contracting authorities who have awarded a public contract or have held a design contest shall send a notice of the results of the results of the award procedure to the Office for Official Publication of the European Communities.

2. The notices shall be published:

— in the case of public contracts for services listed in Annex I A, in accordance with Articles 17 to 20,

— in the case of design contests, in accordance with Article 17.

3. In the case of public contracts for services listed in Annex I B, the contracting authorities shall indicate in the notice whether they agree on its publication.

4. The Commission shall draw up the rules for establishing regular reports on the basis of the notices referred to in paragraph 3, and for the publication of such reports in accordance with the procedure laid down in Article 40 (3).

5. Where the release of information on the contract award would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular enterprise, public or private, or might prejudice fair competition between service providers, such information need not be published.

*Article 17*

1. The notices shall be drawn up in accordance with the models set out in Annexes III and IV and shall specify the information requested in those models. The contracting authorities may not require any conditions other than those specified in Articles 31 and 32 when requesting information concerning the economic and technical standards which they require of service providers for their selection (section 13 of Annex III B, section 13 of Annex III C, and section 12 of Annex III D).

2. The contracting authorities shall send the notices as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 20, the notice shall be sent by telex, telegram or fax.

The notice referred to in Article 15 (1) shall be sent as soon as possible after the beginning of each budgetary year.

The notice referred to in Article 16 (1) shall be sent at the latest forty-eight days after the award of the contract in question or the closure of the design contest in question.

3. The notices referred to in Articles 15 (1) and 16 (1) shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the text in the original language alone being authentic.

4. The notices referred to in Article 15 (2) and (3) shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in their original language. A summary of the important elements of each notice shall be published in the official languages of the Communities, the text in the original language alone being authentic.

**▼B**

5. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 20, this period shall be reduced to five days.

6. The notices shall not be published in the official journals or in the press of the country of the contracting authority before the date of dispatch to the Office for Official Publications of the European Communities; they shall mention that date. They shall not contain information other than that published in the *Official Journal of the European Communities*.

7. The contracting authorities must be able to supply proof of the date of dispatch.

8. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities. The length of the notice shall not be greater than one page of the Official Journal, or approximately 650 words. Each edition of the Official Journal containing one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

*Article 18*

1. In open procedures the time limit for the receipt of tenders shall be fixed by the contracting authorities at not less than 52 days from the date of dispatch of the notice.

**▼M2**

2. The time limit for receipt of tenders laid down in paragraph 1 may be replaced by a period sufficiently long to permit responsive tendering, which, as a general rule, shall be not less than 36 days and in any case not less than 22 days, from the date on which the contract notice was dispatched, if the contracting authorities have sent the indicative notice provided for in Article 15 (1) drafted in accordance with the model in Annex III A (Prior information) to the *Official Journal of the European Communities* within a minimum of 52 days and a maximum of 12 months before the date on which the contract notice provided for in Article 15 (2) was dispatched to the *Official Journal of the European Communities*, provided that the indicative notice contained, in addition, at least as much of the information referred to in the model notice in Annex III B (Open procedure) as was available at the time of publication of the notice.

**▼B**

3. Provided that they have been requested in good time, the contract documents and supporting documents shall be sent to the service providers by the contracting authorities or competent departments within six days of receipt of their application.

4. Provided that it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting authorities not later than six days before the final date fixed for receipt of tenders.

5. Where the contract documents, supporting documents or additional information are too bulky to be supplied within the time limits laid down in paragraph 3 or 4 or where the tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits laid down in paragraph 1 and 2 shall be extended accordingly.

*Article 19*

1. In restricted procedures and negotiated procedures within the meaning of Article 11 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 37 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders. The letter of invi-

**▼B**

tation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also the amount and terms of payment of any sum to be paid for such documents;
  - (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
  - (c) a reference to the contract notice published;
  - (d) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 17 (1), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 31 and 32;
  - (e) the criteria for the award of the contract if these are not given in the notice.
3. In restricted procedures, the time limit for receipt of tenders fixed by the contracting authorities may not be less than forty days from the date of dispatch of the written invitation.

**▼M2**

4. The time limit for receipt of tenders laid down in paragraph 3 may be reduced to 26 days if the contracting authorities have sent the indicative notice provided for in Article 15 (1) drafted in accordance with the model in Annex III A (Prior information) to the *Official Journal of the European Communities* within a minimum of 52 days and a maximum of 12 months before the date on which the contract notice provided for in Article 15 (2) was dispatched to the *Official Journal of the European Communities*, provided that the indicative notice contained, in addition, at least as much of the information referred to in the model in Annex III C (Restricted procedure) or, where applicable, Annex III D (Negotiated procedure) as was available at the time of publication of the notice.

**▼B**

5. Requests to participate in procedures for the award of contracts may be made by letter, telegram, telex, fax or telephone. If by one of the last four, they must be confirmed by letter dispatched before the end of the period laid down in paragraph 1.
6. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not later than six days before the final date fixed for the receipt of tenders.
7. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraphs 3 and 4 shall be extended accordingly.

*Article 20*

1. In cases where urgency renders impracticable the time limits laid down in Article 19, the contracting authorities may fix the following time limits:
- (a) a time limit for receipt of requests to participate which shall be not less than 15 days from the date of dispatch of the notice;
  - (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.
2. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not later than four days before the final date fixed for the receipt of tenders.
3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible.

**▼B**

When requests to participate are made by telegram, telex, fax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

*Article 21*

Contracting authorities may arrange for the publication in the *Official Journal of the European Communities* of notices announcing public service contracts which are not subject to the publication requirement laid down in this Directive.

*Article 22*

The conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 15, 16 and 17 and of the statistical reports provided for in Articles 16 (4) and 39 and the nomenclature provided for in Annexes I A and B together with the reference in the notices to particular positions of the nomenclature within the categories of services listed in those Annexes may be modified in accordance with the procedure laid down in Article 40 (3).

## TITLE VI

## CHAPTER 1

**Common rules on participation***Article 23*

►M2 1. ◀ Contracts shall be awarded on the basis of the criteria laid down in Chapter 3, taking into account Article 24, after the suitability of the service providers not excluded under Article 29 has been checked by the contracting authorities in accordance with the criteria referred to in Articles 31 and 32.

**▼M2**

2. Tenders shall be submitted in writing, directly or by mail. Member States may authorize the submission of tenders by any other means making it possible to ensure:

- that each tender contains all the information necessary for its evaluation,
- that the confidentiality of tenders is maintained pending their evaluation,
- that, where necessary, for reasons of legal proof, such tenders are confirmed as soon as possible in writing or by dispatch of a certified copy,
- that tenders are opened after the time limit for their submission has expired.

**▼B***Article 24*

1. Where the criterion for the award of the contract is that of the economically most advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by such contracting authorities. The contracting authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the contract notice if variants are not authorized.

Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 14 (2) or even by reference to national technical specifications referred to in Article 14 (5) (a) and (b).



**▼B**

2. Contracting authorities which have admitted variants pursuant to paragraph 1 may not reject a variant on the sole grounds that it would lead, if successful, to a supply contract rather than a public service contract within the meaning of this Directive.

*Article 25*

In the contract documents, the contracting authority may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal service provider's liability.

*Article 26*

1. Tenders may be submitted by groups of service providers. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract.

2. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to carry out the relevant service activity, shall not be rejected solely on the grounds that, under the law of the Member State in which the contract is awarded, they would have been required to be either natural or legal persons.

3. Legal persons may be required to indicate in the tender or the request for participation the names and relevant professional qualifications of the staff to be responsible for the performance of the service.

*Article 27*

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the service provider's position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 29 to 35 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of service providers which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be determined in the light of the nature of the service to be provided. The range must number at least five service providers and may be up to twenty.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 11 (2), the number of candidates admitted to negotiate may not be less than three, provided that there is a sufficient number of suitable candidates.

4. Each Member State shall ensure that contracting authorities issue invitations without discrimination to those nationals of other Member States who satisfy the necessary requirements and under the same conditions as to its own nationals.

*Article 28*

1. The contracting authority may state in the contract documents, or be obliged by a Member State to do so, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the services are to be performed and which shall be applicable to the services provided on site during the performance of the contract.

▼B

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the service is to be carried out. This shall be without prejudice to the application of the provisions of Article 37 concerning the examination of abnormally low tenders.

## CHAPTER 2

## Criteria for qualitative selection

*Article 29*

Any service provider may be excluded from participation in a contract who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding-up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgement which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying or failing to supply the information that may be required under this Chapter.

Where the contracting authority requires of the service provider proof that none of the cases quoted in (a), (b), (c), (e), or (f) applies to him, it shall accept as sufficient evidence:

- for (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or in the country whence that person comes showing that these requirements have been met,
- for (e) or (f), a certificate issued by the competent authority in the Member State concerned.

Where the country concerned does not issue such documents or certificates, they may be replaced by a declaration on oath made by the person concerned before a judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

Member States shall, within the time limit referred to in Article 44, designate the authorities and bodies competent to issue such documents or certificates and shall forthwith inform the other Member States and the Commission thereof.

*Article 30*

1. In so far as candidates for a public contract or tenderers have to possess a particular authorization or to be members of a particular organization in their home country in order to be able to perform the

**▼B**

service concerned, the contracting authority may require them to prove that they hold such authorization or membership.

2. Any candidate or tenderer may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a declaration or certificate as described in paragraph 3 below.

3. The relevant professional and trade registers or declarations or certificates are:

- in Belgium, the ‘registre du commerce — Handelsregister’ and the ‘ordres professionnels — Beroepsorden’,
- in Denmark, the ‘Erhvervs- og Selskabstyrelsen’,
- in Germany, the ‘Handelsregister’, the ‘Handwerksrolle’ and the ‘Vereinsregister’,
- in Greece, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as mentioned in Annex I A, the professional register ‘Μητρώο Μελετητών’ and ‘Μητρώο Γραφείων Μελετών’,
- in Spain, the ‘Registro Central de Empresas Consultoras y de Servicios del Ministerio de Economía y Hacienda’,
- in France, the ‘registre du commerce’ and the ‘répertoire des métiers’,
- in Italy, the ‘Registro della Camera di commercio, industria, agricoltura e artigianato’, the ‘Registro delle commissioni provinciali per l’artigianato’ or the ‘Consiglio nazionale degli ordini professionali’,
- in Luxembourg, the ‘registre aux firmes’ and the ‘rôle de la Chambre des métiers’,
- in the Netherlands, the ‘Handelsregister’,
- in Portugal, the ‘Registro nacional das Pessoas Colectivas’,
- in the United Kingdom and Ireland, the service provider may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name,

**▼A1**

- in Austria, the ‘Firmenbuch’, the ‘Gewerberegister’, the ‘Mitgliederzeichnisse der Landeskammern’,
- in Finland, ‘Kaupparekisteri’/‘Handelsregistret’,
- in Sweden, ‘Aktiebolags’-, ‘Handels- eller föreningsregistren’.

**▼B***Article 31*

1. Proof of the service provider's financial and economic standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or evidence of relevant professional risk indemnity insurance;
- (b) the presentation of the service provider's balance sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the service provider is established;
- (c) a statement of the undertaking's overall turnover and its turnover in respect of the services to which the contract relates for the previous three financial years.

2. The contracting authorities shall specify in the contract notice or in the invitation to tender which reference or references mentioned in paragraph 1 they have chosen and which other references are to be produced.

**▼B**

3. If, for any valid reason, the service provider is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

*Article 32*

1. The ability of service providers to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

2. Evidence of the service provider's technical capability may be furnished by one or more of the following means according to the nature, quantity and purpose of the services to be provided:

- (a) the service provider's educational and professional qualifications and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services;
- (b) a list of the principal services provided in the past three years, with the sums, dates and recipients, public or private, of the services provided;
  - where provided to contracting authorities, evidence to be in the form of certificates issued or countersigned by the competent authority,
  - where provided to private purchasers, delivery to be certified by the purchaser or, failing this, simply declared by the service provider to have been effected;
- (c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider, especially those responsible for quality control;
- (d) a statement of the service provider's average annual manpower and the number of managerial staff for the last three years;
- (e) a statement of the tool, plant or technical equipment available to the service provider for carrying out the services;
- (f) a description of the service provider's measures for ensuring quality and his study and research facilities;
- (g) where the services to be provided are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider is established, subject to that body's agreement, on the technical capacities of the service provider and, if necessary, on his study and research facilities and quality control measures;
- (h) an indication of the proportion of the contract which the service provider may intend to sub-contract.

3. The contracting authority shall specify, in the notice or in the invitation to tender, which references it wishes to receive.

4. The extent of the information referred to in Article 31 and in paragraphs 1, 2 and 3 of this Article must be confined to the subject of the contract; contracting authorities shall take into consideration the legitimate interests of the service providers as regards the protection of their technical or trade secrets.

*Article 33*

Where contracting authorities require the production of certificates drawn up by independent bodies for attesting conformity of the service with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant EN 29 000 European standards series certified by bodies conforming to the EN 45 000 European standards series. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

▼B*Article 34*

Within the limits of Articles 29 to 32, contracting authorities may invite the service providers to supplement the certificates and documents submitted or to clarify them.

*Article 35*

1. Member States who have official lists of recognized service providers must adapt them to the provisions of Articles 29 (a) to (d) and (g) and of Articles 30, 31 and 32.

2. Service providers registered in the official lists may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority. This certificate shall state the reference which enabled them to be registered in the list and the classification given in this list.

3. Certified registration in official lists of service providers by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability corresponding to the service provider's classification only as regards Article 29 (a) to (d) and (g), Article 30, Article 31 (b) and (c) and Article 32 (a).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered service provider whenever a contract is offered.

The contracting authorities of other Member States shall apply the above provisions only in favour of service providers established in the Member State holding the official list.

4. When registering service providers from other Member States in an official list, no proof or statement can be required in addition to those required of national service providers and, in any case, none in addition to those required in Articles 29 to 33.

5. Member States which have official lists shall be obliged to inform the other Member States of the address of the body to which applications for registration should be sent.

**CHAPTER 3****Criteria for the award of contracts***Article 36*

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting authority shall base the award of contracts may be:

(a) where the award is made to the economically most advantageous tender, various criteria relating to the contract: for example, quality, technical merit, aesthetic and functional characteristics, technical assistance and after-sales service, delivery date, delivery period or period of completion, price; or

(b) the lowest price only.

2. Where the contract is to be awarded to the economically most advantageous tender, the contracting authority shall state in the contract documents or in the tender notice the award criteria which it intends to apply, where possible in descending order of importance.

*Article 37*

If, for a given contract, tenders appear to be abnormally low in relation to the service to be provided, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

**▼B**

The contracting authority may take into consideration explanations which are justified on objective grounds including the economy of the method by which the service is provided, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the provision of the service, or the originality of the service proposed by the tenderer.

If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must communicate to the Commission the rejection of tenders which it considers to be too low.

## TITLE VII

**Final provisions***Article 38*

The calculation of time limits shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>(1)</sup>

**▼M2***Article 38a*

For the purposes of the award of public contracts by contracting authorities, Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the Agreement on government procurement, concluded in the framework of the Uruguay Round multilateral negotiations<sup>(2)</sup>, hereinafter referred to as 'the Agreement'. Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

*Article 39*

1. In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission a statistical report on the service contracts awarded by contracting authorities during the preceding year not later than 31 October 1997 and thereafter not later than 31 October each year.

2. This report shall detail at least:

- (a) in the case of contracting authorities listed in Annex I to Directive 93/36/EEC:
  - the estimated overall value of contracts awarded below the threshold by each contracting authority,
  - the number and value of contracts awarded above the threshold by each contracting authority, subdivided as far as possible by procedure, category of service according to the nomenclature used in Annex I and the nationality of the service provider to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with Article 11, listing the number and value of contracts awarded to each Member State and to third countries;
- (b) in the case of all other contracting authorities subject to this Directive, for each category of contracting authority, the number and value of contracts awarded above the threshold, subdivided, as far as possible, by procedure, category of service according to the nomenclature used in Annex I and the nationality of the service provider to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with Article

<sup>(1)</sup> OJ No L 124, 8. 6. 1971, p. 1.

<sup>(2)</sup> Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (OJ L 336, 23. 12. 1994, p. 1).

**▼M2**

- 11, listing the number and value of contracts awarded to each Member State and to third countries;
- (c) in the case of contracting authorities listed in Annex I to Directive 93/36/EEC, the number and total value of contracts awarded by each contracting authority pursuant to derogations to the Agreement; in the case of all other contracting authorities subject to this Directive, the total value of contracts awarded by each category of contracting authority pursuant to derogations to the Agreement;
- (d) any other statistical information, to be determined pursuant to the procedure provided for in Article 40 (3), which is required in accordance with the Agreement.

The statistical information required pursuant to this paragraph shall not concern contracts having as their object services listed in category 8 of Annex I A, the telecommunications services in category 5 of Annex I A, under CPC references 7524, 7525 and 7526, or the services listed in Annex I B, provided that their estimated value, net of VAT, is less than ECU 200 000.

3. The Commission shall determine, in accordance with the procedure laid down in Article 40 (3), the nature of any statistical information required pursuant to this Directive.

**▼B***Article 40*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Decision 71/306/EEC.
2. As regards telecommunications services falling within category 5 of Annex I A, the Commission shall also be assisted by the Advisory Committee on Telecommunications Procurement set up by Directive 90/531/EEC.
3. Where reference is made to the procedure laid down in this paragraph, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

4. The Committees mentioned in paragraphs 1 and 2 shall examine, on the initiative of the Commission or at the request of a Member State, any question relating to the application of the Directive.

*Article 41*

Article 1 (1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts<sup>(1)</sup> shall be replaced by the following:

- ‘1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC, 77/62/EE, and 92/50/EEC (+), decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular, Article 2 (7) on the grounds that such decisions have

<sup>(1)</sup> OJ No L 395, 30. 12. 1989, p. 33.

**▼B**

infringed Community law in the field of public procurement or nation rules implementing that law.

(\*) OJ No L 209, 24. 7. 1992, p. 1.'

*Article 42***▼M1****▼B**

2. Article 4a (2) of Directive 71/305/EEC shall be replaced by the following:

- '2. (a) The value of the threshold in national currencies shall normally be revised every two years with effect from 1 January 1992. The calculation of this value shall be based on the average daily values of these currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. These values shall be published in the *Official Journal of the European Communities* at the beginning of November.
- (b) The method of calculation laid down in subparagraph (a) shall be reviewed, on a proposal from the Commission, by the Advisory Committee for Public Contracts in principle two years after its initial application.'

*Article 43*

Not later than three years after the time limit for compliance with this Directive, the Commission, acting in close cooperation with the Committees referred to in Article 40 (1) and (2), shall review the manner in which this Directive has operated, including the effects of the application of the Directive to procurement of the services listed in Annex I A and the provisions concerning technical standards. It shall evaluate, in particular, the prospects for the full application of the Directive to procurement of the other services listed in Annex I B, and the effects of in-house performance of services on the effective opening-up of procurement in this area. It shall make the necessary proposals to adapt the Directive accordingly.

*Article 44*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

*Article 45*

This Directive is addressed to the Member States.





## ANNEX I A

## Services within the meaning of Article 8

Category No	Subject	CPC Reference No
1.	Maintenance and repair services	6112, 6122, 633, 886
2.	Land transport services <sup>(1)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
3.	Air transport services of passengers and freight, except transport of mail	73 (except 7321)
4.	Transport of mail by land <sup>(1)</sup> and by air	71235, 7321
5.	Telecommunications services <sup>(2)</sup>	752
6.	Financial services (a) Insurance services (b) Banking and investment services <sup>(3)</sup>	ex 81 812, 814
7.	Computer and related services	84
8.	R&D services <sup>(4)</sup>	85
9.	Accounting, auditing and book-keeping services	862
10.	Market research and public opinion polling services	864
11.	Management consultant services <sup>(5)</sup> and related services	865, 866
12.	Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
13.	Advertising services	871
14.	Building-cleaning services and property management services	874 82201 to 82206
15.	Publishing and printing services on a fee or contract basis	88442
16.	Sewage and refuse disposal services; sanitation and similar services	94

<sup>(1)</sup> Except for rail transport services covered by Category 18.

<sup>(2)</sup> Except voice telephony, telex, radiotelephony, paging and satellite services.

<sup>(3)</sup> Except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

<sup>(4)</sup> Except research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

<sup>(5)</sup> Except arbitration and conciliation services.

▼B*ANNEX I B***Services within the meaning of Article 9**

Category No	Subject	CPC Reference No
17.	Hotel and restaurant services	64
18.	Rail transport services	711
19.	Water transport services	72
20.	Supporting and auxiliary transport services	74
21.	Legal services	861
22.	Personnel placement and supply services	872
23.	Investigation and security services, except armoured car services	873 (except 87304)
24.	Education and vocational education services	92
25.	Health and social services	93
26.	Recreational, cultural and sporting services	96
27.	Other services	



## ANNEX II

**Definition of certain technical specifications**

For the purpose of this Directive the following terms shall be defined as follows:

1. *Technical specifications*: the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, 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 authority. These technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. They shall 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 authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.
2. *Standard*: a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory.
3. *European standard*: a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European Standards (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations or by the European Telecommunications Standards Institute (ETSI) as a 'European Telecommunication Standard' (ETS).
4. *European technical approval*: a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of applications and use. European approval shall be issued by an approval body designated for this purpose by the Member State;
5. *Common technical specification*: a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.
6. *Essential requirements*: requirements regarding safety, health and certain other aspects in the general interest, that the construction works can meet.

▼ **M2***ANNEX III***MODEL NOTICE OF SERVICES CONTRACTS****A. PRIOR INFORMATION**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority, and, if different, of the service from which additional information may be obtained.
2. Intended total procurement in each of the service categories listed in Annex I A.
3. Estimated date for initiating the award procedures, per category.
4. Other information.
5. Date of dispatch of the notice.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities.
7. Indication whether the procurement is covered by the Agreement.

**B. OPEN PROCEDURE**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2. Category of service and description. CPC reference number. Quantity including, where applicable, any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular or of recurring contracts, also, if known, an estimate of the timing of the subsequent calls for tender for the services to be procured.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether service providers can tender for a part of the services concerned.
6. Where applicable, non-acceptance of variants.
7. Time limits for completion of the service or duration of the service contract and, as far as possible, time limit for starting or providing the service.
8. (a) Name and address of the service from which the necessary documents may be requested.  
(b) Where applicable, final date for making such requests.  
(c) Where applicable, the amount and terms of payment of any sum payable for such documents.
9. (a) Final date for receipt of tenders.  
(b) Address to which they must be sent.  
(c) Language or languages in which they must be drawn up.
10. (a) Persons authorized to be present at the opening of tenders.  
(b) Date, time and place of such opening.
11. Where applicable, any deposits and guarantees required.
12. Main terms concerning financing and payment and/or references to the relevant provisions.
13. Where applicable, the legal form to be taken by the grouping of service providers winning the contract.
14. Information concerning the service provider's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
15. Period during which the tenderer is bound to keep open his tender.

▼ M2

16. Criteria for the award of the contract and, if possible, their order of importance. Criteria other than the lowest price shall be mentioned if they do not appear in the contract documents.
17. Other information.
18. Date(s) of publication of the prior information notice in the *Official Journal of the European Communities* or reference to its non-publication.
19. Date of dispatch of the notice.
20. Date of receipt of the notice by the Office for Official Publications of the European Communities.
21. Indication whether the procurement is covered by the Agreement.

## C. RESTRICTED PROCEDURE

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2. Category of service and description. CPC reference number. Quantity including, where applicable, any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular or of recurring contracts, also, if known, an estimate of the timing of the subsequent calls for tender for the services to be procured.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Time limit for completion of the service or duration of the service contract and, as far as possible, time limit for starting or providing the service.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
(b) Final date for the receipt of requests to participate.  
(c) Address to which they must be sent.  
(d) Language(s) in which they must be drawn up.
11. Final date for dispatch of invitations to tender.
12. Where applicable, any deposits and guarantees required.
13. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
14. Criteria for the award of the contract and, if possible, their order of importance if these are not stated in the invitation to tender.
15. Other information.
16. Date(s) of publication of the prior information notice in the *Official Journal of the European Communities* or reference to its non-publication.
17. Date of dispatch of the notice.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities.
19. Indication whether the procurement is covered by the Agreement.

## D. NEGOTIATED PROCEDURE

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.

▼ M2

2. Category of service and description. CPC reference number. Quantity including, where applicable, any options for further procurement and, if known, an estimate of the timing when such options may be exercised. In the case of regular or of recurring contracts, also, if known, an estimate of the timing of the subsequent calls for tender for the services to be procured.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Time limit for completion of the service or duration of the service contract and, as far as possible, time limit for starting or providing the service.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
(b) Final date for the receipt of requests to participate.  
(c) Address to which they must be sent.  
(d) Language(s) in which they must be drawn up.
11. Where applicable, any deposits and guarantees required.
12. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
13. Where applicable, the names and addresses of service providers already selected by the contracting authority.
14. Other information.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.
17. Date(s) of previous publications in the *Official Journal of the European Communities*.
18. Indication whether the procurement is covered by the GPA.

## E. CONTRACT AWARD NOTICE

1. Name and address of the contracting authority.
2. Award procedure chosen. In the case of the negotiated procedure without prior publication of a tender notice, justification (Article 11 (3)).
3. Category of service and description. CPC reference number. Quantity of services procured.
4. Date of award of the contract.
5. Criteria for award of the contract.
6. Number of tenders received.
7. Name and address of service provider(s).
8. Price or range of prices (minimum/maximum) paid.
9. Value of winning award(s) or the highest and lowest offer taken into account in the award of the contract.
10. Where appropriate, value and proportion of the contract which may be subcontracted to third parties.
11. Other information.

▼ M2

12. Date of publication of the contract notice in the *Official Journal of the European Communities*.
13. Date of dispatch of the notice.
14. Date of receipt of the notice by the Office for Official Publications of the European Communities.
15. In the case of contracts for services listed in Annex I B, agreement by the contracting authority to publication of the notice (Article 16 (3)).

*ANNEX IV**A. Design contest notice*

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
2. Project description.
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of projects.
5. In the case of restricted contests:
  - (a) the number of participants envisaged;
  - (b) where applicable, names of participants already selected;
  - (c) criteria for the selection of participants;
  - (d) final date for receipt of requests to participate.
6. Where applicable, indication of whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of the selected members of the jury.
9. Indication of whether the decision of the jury is binding on the contracting authority.
10. Where applicable, number and value of prizes.
11. Where applicable, details of payments to all participants.
12. Indication of whether the prize-winners are permitted any follow-up contracts.
13. Other information.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*B. Results of design contest*

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2. Project description.
3. Total number of participants.
4. Number of foreign participants.
5. Winner(s) of the contest.
6. Where applicable, the prize(s).
7. Other information.
8. Reference of the design contest notice.
9. Date of dispatch of the notice.
10. Date of receipt of the notice by the Office for Official Publications of the European Communities.