

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (repealed)

DIRECTIVE 2004/18/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 31 March 2004

on the coordination of procedures for the award of public works
contracts, public supply contracts and public service contracts (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Having regard to the opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 9 December 2003,

Whereas:

- (1) On the occasion of new amendments being made to Council Directives 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts⁽⁵⁾, 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts⁽⁶⁾ and 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts⁽⁷⁾, which are necessary to meet requests for simplification and modernisation made by contracting authorities and economic operators alike in their responses to the Green Paper adopted by the Commission on 27 November 1996, the Directives should, in the interests of clarity, be recast. This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles mentioned in recital 2.
- (2) The award of contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law entities, is subject to the respect of the principles of the Treaty and in particular to the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and to the principles deriving therefrom, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual

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recognition, the principle of proportionality and the principle of transparency. However, for public contracts above a certain value, it is advisable to draw up provisions of Community coordination of national procedures for the award of such contracts which are based on these principles so as to ensure the effects of them and to guarantee the opening-up of public procurement to competition. These coordinating provisions should therefore be interpreted in accordance with both the aforementioned rules and principles and other rules of the Treaty.

- (3) Such coordinating provisions should comply as far as possible with current procedures and practices in each of the Member States.
- (4) Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract does not cause any distortion of competition in relation to private tenderers.
- (5) Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts.
- (6) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public policy, public morality, public security, health, human and animal life or the preservation of plant life, in particular with a view to sustainable development, provided that these measures are in conformity with the Treaty.
- (7) 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)⁽⁸⁾, approved in particular the WTO Agreement on Government Procurement, hereinafter referred to as the 'Agreement', the aim of which is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade.

In view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement. This Agreement does not have direct effect. The contracting authorities covered by the Agreement which comply with this Directive and which apply the latter to economic operators of third countries which are signatories to the Agreement should therefore be in conformity with the Agreement. It is also appropriate that those coordinating provisions should guarantee for Community economic operators conditions for participation in public procurement which are just as favourable as those reserved for economic operators of third countries which are signatories to the Agreement.

- (8) Before launching a procedure for the award of a contract, contracting authorities may, using a technical dialogue, seek or accept advice which may be used in the preparation

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of the specifications provided, however, that such advice does not have the effect of precluding competition.

- (9) In view of the diversity of public works contracts, contracting authorities should be able to make provision for contracts for the design and execution of work to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly must be determined by qualitative and economic criteria, which may be defined by national law.
- (10) A contract shall be deemed to be a public works contract only if its subject matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Public service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, insofar as such works are incidental to the principal subject-matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a public works contract.
- (11) A Community definition of framework agreements, together with specific rules on framework agreements concluded for contracts falling within the scope of this Directive, should be provided. Under these rules, when a contracting authority enters into a framework agreement in accordance with the provisions of this Directive relating, in particular, to advertising, time limits and conditions for the submission of tenders, it may enter into contracts based on such a framework agreement during its term of validity either by applying the terms set forth in the framework agreement or, if all terms have not been fixed in advance in the framework agreement, by reopening competition between the parties to the framework agreement in relation to those terms. The reopening of competition should comply with certain rules the aim of which is to guarantee the required flexibility and to guarantee respect for the general principles, in particular the principle of equal treatment. For the same reasons, the term of the framework agreements should not exceed four years, except in cases duly justified by the contracting authorities.
- (12) Certain new electronic purchasing techniques are continually being developed. Such techniques help to increase competition and streamline public purchasing, particularly in terms of the savings in time and money which their use will allow. Contracting authorities may make use of electronic purchasing techniques, providing such use complies with the rules drawn up under this Directive and the principles of equal treatment, non-discrimination and transparency. To that extent, a tender submitted by a tenderer, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting authority in accordance with Article 42.
- (13) In view of the rapid expansion of electronic purchasing systems, appropriate rules should now be introduced to enable contracting authorities to take full advantage of the possibilities afforded by these systems. Against this background, it is necessary

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to define a completely electronic dynamic purchasing system for commonly used purchases, and lay down specific rules for setting up and operating such a system in order to ensure the fair treatment of any economic operator who wishes to take part therein. Any economic operator which submits an indicative tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting authority, through the establishment of a list of tenderers already selected and the opportunity given to new tenderers to take part, to have a particularly broad range of tenders as a result of the electronic facilities available, and hence to ensure optimum use of public funds through broad competition.

- (14) Since use of the technique of electronic auctions is likely to increase, such auctions should be given a Community definition and governed by specific rules in order to ensure that they operate in full accordance with the principles of equal treatment, non-discrimination and transparency. To that end, provision should be made for such electronic auctions to deal only with contracts for works, supplies or services for which the specifications can be determined with precision. Such may in particular be the case for recurring supplies, works and service contracts. With the same objective, it must also be possible to establish the respective ranking of the tenderers at any stage of the electronic auction. Recourse to electronic auctions enables contracting authorities to ask tenderers to submit new prices, revised downwards, and when the contract is awarded to the most economically advantageous tender, also to improve elements of the tenders other than prices. In order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention and/or appreciation by the contracting authority, may be the object of electronic auctions, that is, only the elements which are quantifiable so that they can be expressed in figures or percentages. On the other hand, those aspects of the tenders which imply an appreciation of non-quantifiable elements should not be the object of electronic auctions. Consequently, certain works contracts and certain service contracts having as their subject-matter intellectual performances, such as the design of works, should not be the object of electronic auctions.
- (15) Certain centralised purchasing techniques have been developed in Member States. Several contracting authorities are responsible for making acquisitions or awarding public contracts/framework agreements for other contracting authorities. In view of the large volumes purchased, those techniques help increase competition and streamline public purchasing. Provision should therefore be made for a Community definition of central purchasing bodies dedicated to contracting authorities. A definition should also be given of the conditions under which, in accordance with the principles of non-discrimination and equal treatment, contracting authorities purchasing works, supplies and/or services through a central purchasing body may be deemed to have complied with this Directive.
- (16) In order to take account of the different circumstances obtaining in Member States, Member States should be allowed to choose whether contracting authorities may use framework agreements, central purchasing bodies, dynamic purchasing systems, electronic auctions or the competitive dialogue procedure, as defined and regulated by this Directive.

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- (17) Multiplying the number of thresholds for applying the coordinating provisions complicates matters for contracting authorities. Furthermore, in the context of monetary union such thresholds should be established in euro. Accordingly, thresholds should be set, in euro, in such a way as to simplify the application of such provisions, while at the same time ensuring compliance with the thresholds provided for by the Agreement which are expressed in special drawing rights. In this context, provision should also be made for periodic reviews of the thresholds expressed in euro so as to adjust them, where necessary, in line with possible variations in the value of the euro in relation to the special drawing right.
- (18) The field of services is best delineated, for the purpose of applying the procedural rules of this Directive and for monitoring purposes, by subdividing it into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, II A and II B, according to the regime to which they are subject. As regards services in Annex II B, the relevant provisions of this Directive should be without prejudice to the application of Community rules specific to the services in question.
- (19) As regards public service contracts, full application of this Directive should be limited, for a transitional period, to contracts where its provisions will permit the full potential for increased cross-frontier trade to be realised. Contracts for other services need to be monitored during this transitional period before a decision is taken on the full application of this Directive. In this respect, the mechanism for such monitoring needs to be defined. This mechanism should, at the same time, enable interested parties to have access to the relevant information.
- (20) Public contracts which are awarded by the contracting authorities operating in the water, energy, transport and postal services sectors and which fall within the scope of those activities are covered by Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors⁽⁹⁾. However, contracts awarded by the contracting authorities in the context of their service activities for maritime, coastal or river transport must fall within the scope of this Directive.
- (21) In view of the situation of effective market competition in the telecommunications sector following the implementation of the Community rules aimed at liberalising that sector, public contracts in that area should be excluded from the scope of this Directive insofar as they are intended primarily to allow the contracting authorities to exercise certain activities in the telecommunications sector. Those activities are defined in accordance with the definitions used in Articles 1, 2 and 8 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sector⁽¹⁰⁾, such that this Directive does not apply to contracts which have been excluded from the scope of Directive 93/38/EEC pursuant to Article 8 thereof.
- (22) Provision should be made for cases in which it is possible to refrain from applying the measures for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the awarding of contracts which derive from international

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agreements, relating to the stationing of troops, or which are specific to international organisations are applicable.

- (23) Pursuant to Article 163 of the Treaty, the encouragement of research and technological development is a means of strengthening the scientific and technological basis of Community industry, and the opening-up of public service contracts contributes to this end. This Directive should not cover the cofinancing of research and development programmes: research and development 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.
- (24) In the context of services, contracts for the acquisition or rental of immovable property or rights to such property have particular characteristics which make the application of public procurement rules inappropriate.
- (25) The awarding of public contracts for certain audiovisual services in the field of broadcasting should allow aspects of cultural or social significance to be taken into account which render application of procurement rules inappropriate. For these reasons, an exception must therefore be made for public service contracts for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme and contracts concerning broadcasting times. However, this exclusion should not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes. A broadcast should be defined as transmission and distribution using any form of electronic network.
- (26) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules.
- (27) In accordance with the Agreement, the financial services covered by this Directive do not include instruments of monetary policy, exchange rates, public debt, reserve management or other policies involving transactions in securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital. Accordingly, contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments are not covered. Central bank services are also excluded.
- (28) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States may reserve the right to participate in award procedures for public contracts to such workshops or reserve performance of contracts to the context of sheltered employment programmes.

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- (29) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and/or specific environmental effects of product groups or services. They can use, but are not obliged to use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties. Contracting authorities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting authority cover.
- (30) Additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document.
- (31) Contracting authorities which carry out particularly complex projects may, without this being due to any fault on their part, find it objectively impossible to define the means of satisfying their needs or of assessing what the market can offer in the way of technical solutions and/or financial/legal solutions. This situation may arise in particular with the implementation of important integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing the financial and legal make-up of which cannot be defined in advance. To the extent that use of open or restricted procedures does not allow the award of such contracts, a flexible procedure should be provided which preserves not only competition between economic operators but also the need for the contracting authorities to discuss all aspects of the contract with each candidate. However, this procedure must not be used in such a way as to restrict or distort competition, particularly by altering any fundamental aspects of the offers, or by imposing substantial new requirements on the successful tenderer, or by involving any tenderer other than the one selected as the most economically advantageous.
- (32) In order to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market, it is advisable to include provisions on subcontracting.

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- (33) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.
- (34) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁽¹¹⁾ lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.
- (35) In view of new developments in information and communications technology, and the simplifications these can bring in terms of publicising contracts and the efficiency and transparency of procurement processes, electronic means should be put on a par with traditional means of communication and information exchange. As far as possible, the means and technology chosen should be compatible with the technologies used in other Member States.
- (36) To ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community. The information contained in these notices must enable economic operators in the Community to determine whether the proposed contracts are of interest to them. For this purpose, it is appropriate to give them adequate information on the object of the contract and the conditions attached thereto. Improved visibility should therefore be ensured for public notices by means of appropriate instruments, such as standard contract notice forms and the Common Procurement Vocabulary (CPV) provided for in Regulation (EC) No 2195/2002 of the European Parliament and of the Council⁽¹²⁾ as the reference nomenclature for public contracts. In restricted procedures, advertisement is, more particularly, intended to enable contractors of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions.

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- (37) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures⁽¹³⁾ and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce')⁽¹⁴⁾ should, in the context of this Directive, apply to the transmission of information by electronic means. The public procurement procedures and the rules applicable to service contests require a level of security and confidentiality higher than that required by these Directives. Accordingly, the devices for the electronic receipt of offers, requests to participate and plans and projects should comply with specific additional requirements. To this end, use of electronic signatures, in particular advanced electronic signatures, should, as far as possible, be encouraged. Moreover, the existence of voluntary accreditation schemes could constitute a favourable framework for enhancing the level of certification service provision for these devices.
- (38) The use of electronic means leads to savings in time. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Community level.
- (39) Verification of the suitability of tenderers, in open procedures, and of candidates, in restricted and negotiated procedures with publication of a contract notice and in the competitive dialogue, and the selection thereof, should be carried out in transparent conditions. For this purpose, non-discriminatory criteria should be indicated which the contracting authorities may use when selecting competitors and the means which economic operators may use to prove they have satisfied those criteria. In the same spirit of transparency, the contracting authority should be required, as soon as a contract is put out to competition, to indicate the selection criteria it will use and the level of specific competence it may or may not demand of the economic operators before admitting them to the procurement procedure.
- (40) A contracting authority may limit the number of candidates in the restricted and negotiated procedures with publication of a contract notice, and in the competitive dialogue. Such a reduction of candidates should be performed on the basis of objective criteria indicated in the contract notice. These objective criteria do not necessarily imply weightings. For criteria relating to the personal situation of economic operators, a general reference in the contract notice to the situations set out in Article 45 may suffice.
- (41) In the competitive dialogue and negotiated procedures with publication of a contract notice, in view of the flexibility which may be required and the high level of costs associated with such methods of procurement, contracting authorities should be entitled to make provision for the procedure to be conducted in successive stages in order gradually to reduce, on the basis of previously indicated contract award criteria, the number of tenders which they will go on to discuss or negotiate. This reduction should, insofar as the number of appropriate solutions or candidates allows, ensure that there is genuine competition.

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- (42) 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 a procurement procedure or a design contest.
- (43) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities or of money laundering should be avoided. Where appropriate, the contracting authorities should ask candidates or tenderers to supply relevant documents and, where they have doubts concerning the personal situation of a candidate or tenderer, they may seek the cooperation of the competent authorities of the Member State concerned. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a judgment concerning such offences rendered in accordance with national law that has the force of *res judicata*. If national law contains provisions to this effect, non-compliance with environmental legislation or legislation on unlawful agreements in public contracts which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.
- Non-observance of national provisions implementing the Council Directives 2000/78/EC⁽¹⁵⁾ and 76/207/EEC⁽¹⁶⁾ concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.
- (44) In appropriate cases, in which the nature of the works and/or services justifies applying environmental management measures or schemes during the performance of a public contract, the application of such measures or schemes may be required. Environmental management schemes, whether or not they are registered under Community instruments such as Regulation (EC) No 761/2001⁽¹⁷⁾ (EMAS), can demonstrate that the economic operator has the technical capability to perform the contract. Moreover, a description of the measures implemented by the economic operator to ensure the same level of environmental protection should be accepted as an alternative to environmental management registration schemes as a form of evidence.
- (45) This Directive allows Member States to establish official lists of contractors, suppliers or service providers or a system of certification by public or private bodies, and makes provision for the effects of such registration or such certification in a contract award procedure in another Member State. As regards official lists of approved economic operators, it is important to take into account Court of Justice case-law in cases where an economic operator belonging to a group claims the economic, financial or technical capabilities of other companies in the group in support of its application for registration. In this case, it is for the economic operator to prove that those resources will actually be available to it throughout the period of validity of the registration. For the purposes of that registration, a Member State may therefore determine the level of requirements to be met and in particular, for example where the operator lays claim to the financial

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standing of another company in the group, it may require that that company be held liable, if necessary jointly and severally.

- (46) Contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: ‘the lowest price’ and ‘the most economically advantageous tender’.

To ensure compliance with the principle of equal treatment in the award of contracts, it is appropriate to lay down an obligation — established by case-law — to ensure the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied to identify the most economically advantageous tender. It is therefore the responsibility of contracting authorities to indicate the criteria for the award of the contract and the relative weighting given to each of those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. Contracting authorities may derogate from indicating the weighting of the criteria for the award in duly justified cases for which they must be able to give reasons, where the weighting cannot be established in advance, in particular on account of the complexity of the contract. In such cases, they must indicate the descending order of importance of the criteria.

Where the contracting authorities choose to award a contract to the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money. In order to do this, they shall determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting authority. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the contract, as defined in the technical specifications, and the value for money of each tender to be measured.

In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs — defined in the specifications of the contract — of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

- (47) In the case of public service contracts, the award criteria must not affect the application of national provisions on the remuneration of certain services, such as, for example, the services performed by architects, engineers or lawyers and, where public supply contracts are concerned, the application of national provisions setting out fixed prices for school books.

- (48) Certain technical conditions, and in particular those concerning notices and statistical reports, as well as the nomenclature used and the conditions of reference to that

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nomenclature, will need to be adopted and amended in the light of changing technical requirements. The lists of contracting authorities in the Annexes will also need to be updated. It is therefore appropriate to put in place a flexible and rapid adoption procedure for this purpose.

- (49) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁸⁾.
- (50) It is appropriate that Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits⁽¹⁹⁾ should apply to the calculation of the time limits contained in this Directive.
- (51) This Directive should not prejudice the time limits set out in Annex XI, within which Member States are required to transpose and apply Directives 92/50/EEC, 93/36/EEC and 93/37/EEC,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 29 E, 30.1.2001, p. 11](#) and [OJ C 203 E, 27.8.2002, p. 210](#).
- (2) [OJ C 193, 10.7.2001, p. 7](#).
- (3) [OJ C 144, 16.5.2001, p. 23](#).
- (4) Opinion of the European Parliament of 17 January 2002 ([OJ C 271 E, 7.11.2002, p. 176](#)), Council Common Position of 20 March 2003 ([OJ C 147 E, 24.6.2003, p. 1](#)) and Position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.
- (5) [OJ L 209, 24.7.1992, p. 1](#). Directive as last amended by Commission Directive 2001/78/EC ([OJ L 285, 29.10.2001, p. 1](#)).
- (6) [OJ L 199, 9.8.1993, p. 1](#). Directive as last amended by Commission Directive 2001/78/EC.
- (7) [OJ L 199, 9.8.1993, p. 54](#). Directive as last amended by Commission Directive 2001/78/EC.
- (8) [OJ L 336, 23.12.1994, p. 1](#).
- (9) See p. 1 of this Official Journal.
- (10) [OJ L 199, 9.8.1993, p. 84](#). Directive as last amended by Commission Directive 2001/78/EC ([OJ L 285, 29.10.2001, p. 1](#)).
- (11) [OJ L 18, 21.1.1997, p. 1](#).
- (12) [OJ L 340, 16.12.2002, p.1](#).
- (13) [OJ L 13, 19.1.2000, p. 12](#).
- (14) [OJ L 178, 17.7.2000, p. 1](#).
- (15) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([OJ L 303, 2.12.2000, p. 16](#)).
- (16) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ([OJ L 39, 14.2.1976, p. 40](#)). Directive amended by Directive 2002/73/EC of the European Parliament and of the Council ([OJ L 269, 5.10.2002, p. 15](#)).
- (17) Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing a voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) ([OJ L 114, 24.4.2001, p. 1](#)).
- (18) [OJ L 184, 17.7.1999, p. 23](#).
- (19) [OJ L 124, 8.6.1971, p. 1](#).