

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance)

TITLE II

RULES ON PUBLIC CONTRACTS

CHAPTER I

Procedures

Article 26

Choice of procedures

1 When awarding public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 32, a call for competition has been published in accordance with this Directive.

2 Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.

3 Member States shall provide that contracting authorities may apply innovation partnerships as regulated in this Directive.

4 Member States shall provide that contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue in the following situations:

- a with regard to works, supplies or services fulfilling one or more of the following criteria:
 - (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;
 - (ii) they include design or innovative solutions;
 - (iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;
 - (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 2 to 5 of Annex VII;
- b with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities shall not be required to publish a contract notice where they include in the procedure all of, and only, the tenderers which satisfy the criteria set out in Articles 57 to 64 and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

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

5 The call for competition shall be made by means of a contract notice pursuant to Article 49.

Where the contract is awarded by restricted procedure or competitive procedure with negotiation, Member States may provide, notwithstanding the first subparagraph of this paragraph, that sub-central contracting authorities or specific categories thereof may make the call for competition by means of a prior information notice pursuant to Article 48(2).

Where the call for competition is made by means of a prior information notice pursuant to Article 48(2), economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of an invitation to confirm interest in conformity with Article 54.

6 In the specific cases and circumstances referred to expressly in Article 32, Member States may provide that contracting authorities may apply a negotiated procedure without prior publication of a call for competition. Member States shall not allow the application of that procedure in any other cases than those referred to in Article 32.