

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 II

Techniques and instruments for electronic and aggregated procurement

Article 39

Procurement involving contracting authorities from different Member States

1 Without prejudice to Article 12, contracting authorities from different Member States may act jointly in the award of public contracts by using one of the means provided for in this Article.

Contracting authorities shall not use the means provided in this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in their Member State.

2 A Member State shall not prohibit its contracting authorities from using centralised purchasing activities offered by central purchasing bodies located in another Member State.

In respect of centralised purchasing activities offered by a central purchasing body located in another Member State than the contracting authority, Member States may, however, choose to specify that their contracting authorities may only use the centralised purchasing activities as defined in either point (a) or in point (b) of point (14) of Article 2(1).

3 The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

- a the award of a contract under a dynamic purchasing system;
- b the conduct of a reopening of competition under a framework agreement;
- c the determination pursuant to points (a) or (b) of Article 33(4) of which of the economic operators, party to the framework agreement, shall perform a given task.

4 Several contracting authorities from different Member States may jointly award a public contract, conclude a framework agreement or operate a dynamic purchasing system. They may also, to the extent set out in the second subparagraph of Article 33(2), award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary elements have been regulated by an international agreement concluded between the Member

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States concerned, the participating contracting authorities shall conclude an agreement that determines:

- a the responsibilities of the parties and the relevant applicable national provisions;
- b the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

A participating contracting authority fulfils its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting authority which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in point (a), the participating contracting authorities may allocate specific responsibilities among them and determine the applicable provisions of the national laws of any of their respective Member States. The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded public contracts.

5 Where several contracting authorities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council⁽¹⁾ or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:

- a the national provisions of the Member State where the joint entity has its registered office;
- b the national provisions of the Member State where the joint entity is carrying out its activities.

The agreement referred to in the first subparagraph may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

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- (1) Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) ([OJ L 210, 31.7.2006, p. 19](#)).