

EXPLANATORY MEMORANDUM TO
THE PUBLIC CONTRACTS REGULATIONS 2006

2006 No. 5

1. This explanatory memorandum has been prepared by the Office of Government Commerce, which is an office of Her Majesty's Treasury, and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Both Regulations covered by this memorandum implement new EU procurement Directives and replace existing Regulations in this area. The Public Contracts Regulations 2006 implement the new Public Sector Procurement Directive (2004/18/EC) which provides revised rules for the procurement of supplies, works and services, above certain thresholds, by public authorities. The Utilities Contracts Regulations 2006 implement the revised Utilities Directive (2004/17/EC) which provides, in a similar way, revised rules for procurement in the utilities sector. The Public Contracts Regulations also re-enact the provisions of existing Council Directive 89/665/EEC, on remedies for public sector procurement, and the Utilities Contracts Regulations also re-enact the provisions of existing Council Directive 92/13/EEC, on remedies for the utilities sector. These "remedies" provisions are largely unchanged from those in the existing Regulations.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These two Regulations are being made to implement EU Directives under section 2(2) of the European Communities Act 1972. They will replace existing Regulations which cover similar ground. Scrutiny was approved by the Scrutiny Committees of both Houses in November 2003 and copies of the agreed texts of the Directives sent to the Committees in January 2004.

5. Extent

5.1 These instruments apply to England, Wales and Northern Ireland. They do not extend to Scotland, which is implementing these Directives independently.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and the Public Contracts Regulations only make minor consequential amendments and repeals to primary legislation, no statement is required.

7. Policy background

7.1 The total public procurement spend across Europe represents over €1500 billion, which is over 16% of EU GDP. The procurement Directives, which are based on the principles of transparency, non-discrimination and competitive procurement, are of great significance in promoting the single European market and in facilitating the achievement of value for money for the taxpayer

7.2 The change to the legislation is necessary in order to implement two new public procurement Directives, one covering the public sector (Directive 2004/18/EC) and the other covering the utilities sector (Directive 2004/17/EC).

7.3 The Directives set out the procedures to be followed at each stage of the procurement process. The new public sector Directive brings together three previous Directives on public sector procurement, covering supplies, works and services, into one text and provides a more consistent set of rules for these three kinds of contracts. It also clarifies and modernises the previous texts to make the rules more helpful to today's procurers and suppliers. It introduces a new procedure, called competitive dialogue, for particularly complex projects. It also includes a provision, for the first time, on framework agreements. The new utilities Directive updates the previous version – in particular on coverage – and it introduces an exclusion mechanism for activities which are fully exposed to competition and where market access is open. Both Directives also cover electronic procurement systems, including e-auctions, for the first time and provide some clarity of the scope to take account of environmental and social issues in the procurement scope.

7.4 The simpler and more consistent public sector text should reduce the burdens involved in procuring goods, works and services under the EU rules, while the scope to make use of modern procurement methods and systems – such as e-auctions, framework agreements and competitive dialogue – should improve efficiency in public procurement and help deliver value for money for the taxpayer.

7.5 The new Directives have already been adopted at European level and cannot now be changed. The implementing Regulations include the changes agreed at the European level, covered in paragraph 7.3. Where appropriate, the implementing Regulations include some further clarification of the provisions in the Directives, although we have avoided any unnecessary elaboration or any elaboration which risks being at odds with the Directives.

7.6 In developing its negotiating line leading up to the agreement of the new Directives, the Office of Government Commerce consulted widely across the public and private sectors. Once the new Directives had been adopted, two further consultation exercises were held - on the new implementing Regulations. These exercises demonstrated that there is significant interest in the new provisions mentioned in paragraph 7.3 above. Guidance is being prepared to cover these new provisions.

7.7 The new Regulations also re-enact the provisions of the existing Remedies Directives. The remedies provisions in the new Regulations are unchanged from those in the Regulations they are replacing except for one minor addition. This change gives effect to

European Court of Justice case law which has clarified certain provisions of the Remedies Directives.

7.8 *Alcatel Austria –v- Bundesministerium für Wissenschaft und Verkehr* (C81/98) (“Alcatel”) interpreted Article 2(1) (a) and (b) and Article 2(6) of the Remedies Directives. The court held that national courts in EU Member States must, in all cases, be able to review and set aside award decisions on procurement contracts subject to the EU procurement Directives. A subsequent ECJ ruling *Commission –v- Austria* (C-212/02) clarified that there should be a period of time between the contract award decision and the start of the contract to ensure that complainants are able, in duly justified cases, to bring actions in the national court for suspension and set-aside of the contract award decision. This means introducing a mandatory standstill period between notification of award decision and the actual entry into the contract. Transparency and fairness are ensured by the requirement for the contracting authority to provide information about the contract award decision to unsuccessful tenderers during the standstill period.

7.9 These Alcatel changes reflect recently completed detailed negotiations with the European Commission on how to implement the judgment in the UK and have taken account of comments received in a short public consultation exercise.

8 Impact

8.1 Two Regulatory Impact Assessments, one for the Public Contracts Regulations and one for the Utilities Contracts Regulations, are attached to this Memorandum.

9. Contact

9.1 Mike Davis at the Office of Government Commerce: Tel; 01603 704739 or e-mail mike.davis@ogc.gsi.gov.uk can answer queries regarding the instruments.

Regulatory Impact Assessment - Public Contracts Regulations 2006

1. Title

The Public Contracts Regulations 2006 implement Directive 2004/18/EC on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

2. Purpose and intended effect

2.1 Objective

The EU public procurement rules seek to ensure that public sector bodies award contracts in an efficient and non-discriminatory manner. Directive 2004/18/EC aims to simplify, clarify and modernise the existing EU rules for public procurement. The Directive brings together the three separate existing Directives¹, for public works, supplies and services contracts into a single text. To take account of modern procurement techniques, there are new provisions facilitating the use of e-procurement, providing for competitive dialogue in the award of complex contracts and explicitly providing for the use of framework agreements. There is also greater clarity on the extent to which social and environmental issues can be considered during the procurement process. The Directive must be implemented into UK law by 31 January 2006. There is also a need to implement into UK law the European Court of Justice (ECJ) judgment in the Alcatel case (C-81/98) and subsequent case law which followed the same line.

2.2 Background

In 2001 total public procurement spend represented 16.2% of EU GDP - around €1500 billion. The procurement Directives are therefore of great significance. They are based on the principles of transparency, non-discrimination and competitive procurement, and facilitate the achievement of value for money for the taxpayer as well as promoting the single European market.

Directive 2004/18/EC was adopted by the EU's Council of Ministers and the European Parliament on 31 March 2004. It came into force on the day it was published in the Official Journal of the European Union on 30 April 2004 and must be implemented within 21 months of that date, which means it must be fully implemented in the UK by 31 January 2006. This will be achieved by the making of Regulations under section 2(2) of the European Communities Act 1972.

The text of the Directive is available online². It sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain thresholds

¹ Directive 93/36/EEC concerning the award of supplies contracts; Directive 93/37/EEC concerning the award of works contracts; and Directive 92/50/EEC concerning the award of services contracts'. A fourth Directive, 97/52/EC, amended the previous Directives. These are implemented into UK law as The Public Supply Contracts Regulations 1995, The Public Services Contracts Regulations 1993 and The Public Works Contracts Regulations 1991, as amended by The Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 and The Public Contracts (Works, Services and Supply) and Utilities Contracts (Amendment) Regulations 2003.

² http://www.europa.eu.int/eur-lex/en/archive/2004/l_13420040430en.html

for works, services and supplies by contracting authorities as defined (state, regional or local authorities and bodies governed by public law).

The Directive has already been adopted at European level and cannot now be changed. Where appropriate the Regulations include some clarification and elaboration of particular provisions in the draft Regulations. However, in line with Government policy on implementing Directives, they avoid unnecessary super equivalence, or any super equivalence which risks being at odds with the meaning of the Directive. Written guidance will be provided on some of the more important or difficult issues.

In addition to implementing the new Directive, there is also a need to give effect, in the new Regulations, to the ECJ judgment on Alcatel. The ECJ ruled that, for procurements caught by the EU procurement Directives, a contract award decision must, in all cases, be open to review before contract conclusion to enable the award decision to be set aside by a court where an aggrieved bidder has been prejudiced by a breach of the rules, notwithstanding the possibility of damages being awarded after contract conclusion. To comply with the ECJ judgment, the Government has agreed that a 10 day mandatory standstill period will be introduced in the UK between communication of award decision and contract conclusion for procurements subject to the EU procurement Directives.

2.3 Devolution

Northern Ireland and Wales have not implemented independently, while Scotland has elected to do so. Contracting authorities in Scotland will be bound by The Public Contracts (Scotland) Regulations 2006.

2.4 Rationale for Government intervention

The Directive re-enacts most of the provisions in the existing Directives, while simplifying, clarifying and modernising them. It will benefit public sector bodies awarding contracts by improving efficiency and effectiveness and by allowing them to take advantage of modern procurement techniques in order to achieve value for money. The points of clarification provide greater legal certainty to public bodies and their suppliers, and the simplification will reduce the burden on all in terms of adhering to the requirements of the Directive.

Even if the European Directives did not exist, UK policy and the EU Treaty would require contracting authorities to follow similar rules, such as obligations to advertise, because they ensure value for money and transparency. The consolidation of Directives and clarification of certain points in the new Directive should lead to an increase in efficiency in this area.

Not having such legislation would, amongst other things, allow other EU Member States to adopt 'buy national' policies to the detriment of British companies, would risk corruption, and would jeopardise the achievement of the UK policy of value for money if contracts are not awarded through a competitive process.

Many of the new elements of this Directive are in any case permissive, in that the contracting authorities have the choice to make use of them. It is not compulsory for contracting authorities to use new facilities, such as frameworks, but if they do choose to, they must follow the rules set out in the Directive. Many of the new facilities are already being used in Member States, such as frameworks and e-auctions in the UK. The Directive simply clarifies their use under the legal framework.

3. Consultation

In developing its policy and negotiating line leading up to the agreement of the new Directive, the Office of Government Commerce (OGC) consulted widely including the Chartered Institute of Purchasing and Supply, Confederation of British Industry, Department for Environment, Food and Rural Affairs, the Scottish Executive, the Welsh Assembly Government, Northern Ireland, Heads of Procurement in other Government Departments, Office of the Deputy Prime Minister, Small Business Service and Trades Union Congress.

Once the Directive was adopted at European level, OGC consulted on the approach to take in implementing it into UK law in 2004. A total of 255 responses were received from a range of interested parties including central and local government, law firms, suppliers, trade unions and pressure groups. OGC's proposal was to include in the Regulations all the new optional provisions, but to implement these as optional on contracting authorities, to allow for the maximum flexibility. The majority of responses agreed with this approach. Guidance was requested to supplement some of the new provisions. This will be provided.

OGC consulted on the draft Public Contracts Regulations between 20 June and 12 September 2005. A total of 79 responses were received from a wide range of respondents including Government departments, local authorities, NHS PASA, purchasing organisations, business and industry groups, anti-corruption bodies, trade unions, utilities, law firms and a small number of private individuals. The general view was supportive of the draft Regulations and of OGC's approach to detailed implementation. A summary of Responses is available on the OGC website³.

A separate six week consultation on the proposals for implementing the Alcatel judgment ended on 10 October. Those consulted included the CBI, other business groups, academics, specialist legal advisers, the devolved administrations and other Government Departments, including ODPM and the Small Business Service of DTI. We received some 40 helpful responses to that consultation.

4. Options

4.1 Option 1 – Do nothing

At present, UK public procurers are bound by the existing procurement Regulations which implement the previous Public Sector Procurement Directives⁴. If these are not rescinded and new Regulations introduced to implement the new Directive, the provisions in the new Directive which take account of modern procurement techniques and best practice would not be able to be used. This would also create legal uncertainty. In addition, non-implementation of the Directive would trigger infraction proceedings and the UK would be liable for substantial penalties. Ministers have therefore agreed that we should implement the Directive, in line with the Government's EU Treaty obligations.

³ See <http://www.ogc.gov.uk/index.asp?id=1000084>.

⁴ Directive 93/36/EEC concerning the award of supplies contracts
Directive 93/37/EEC concerning the award of works contracts
Directive 92/50/EEC concerning the award of services contracts
A fourth Directive, 97/52/EC, amended the previous Directives

On the Alcatel judgment, there is no alternative to introducing a mandatory standstill period to meet the ECJ ruling. Non-implementation would trigger a referral of the UK by the European Commission to the ECJ.

4.2 Option 2 – Implement Directive into UK law

The options for implementation are constrained by the requirements of the Directive, which has already been adopted at European level. Within these constraints there are a number of Articles in the Directive where Member States had choices as to how, and in some cases, whether, to implement particular provisions. Following responses to public consultations in 2004 and 2005, implementing regulations have been drafted for all these Articles:

Article 11	Central purchasing bodies
Article 19	Reserved contracts and sheltered workshops
Article 25	Information on sub-contracting
Article 27	Obligations relating to taxes, environmental protection etc
Article 29	Competitive dialogue
Article 32	Framework agreements
Article 33	Dynamic purchasing systems
Article 45	Personal situation of the candidate or tenderer
Article 54	Electronic auctions

5. Costs and benefits

5.1 Business sectors affected

This Directive binds public sector contracting authorities, as defined (state, regional or local authorities and bodies governed by public law).

Only the public sector must comply with the rules and there is therefore no direct effect on business.

There may be an indirect effect on those businesses that contract with the public sector, where the contracts concerned exceed the thresholds set by the Directives. However, as this Directive simplifies and clarifies rules that already exist, it should not cause any additional burdens for contracting authorities or providers.

On the Alcatel judgment, it is the public sector which must comply with the requirement for a standstill period. A winning tenderer will only face substantial additional delay and cost if a complainant is able to bring a well-founded case before a court in the short period following the award decision, and that case is not resolved quickly. However, overall the Alcatel amendment ensures greater transparency and fairness at the award stage of procurements covered by the full scope of the Directive.

5.2 Regulatory burden

The new Directive is a simplification and clarification of existing regulation and thereby reduces the regulatory burden. Moreover, new provisions in the Directive such as electronic auctions and the competitive dialogue procedure allow greater flexibility in the public procurement process.

5.3 Compliance costs

There will be no compliance costs for business from these rules. It is only public sector contracting authorities which must comply with the Directive. The Directive replaces three existing Directives and simplifies and clarifies the procurement processes already in operation. Any costs in the procurement process should be reduced by these simplified and improved rules.

5.4 Impact on public sector bodies

As the Directive clarifies, simplifies and modernises legislation that already exists, it should not cause any additional costs for public sector bodies, nor should it affect front line delivery of services. A comprehensive training module on the new Directive is available on the OGC website⁵. The mandatory standstill period will only apply to the procurements which are subject to the full scope of the EU procurement Directive and which are above the relevant thresholds.

5.5 Equity and fairness

There should be no disproportionate effect on particular business sectors, and public sector bodies in other EU Member States will also be subject to the rules in the same way.

5.6 Environmental / social costs

There will be no costs imposed of an environmental or social nature.

6. The Small Firm's Impact Test

As discussed in section 5, the Directive impacts directly on public sector purchasers, rather than providers or SMEs, and does not change the position under the existing EU procurement rules. The Small Business Service was consulted on this in May 2005.

7. Competition assessment

This Directive binds only the public sector. The Directive sets out the procedures to follow for public procurements above certain thresholds, but these will not affect any particular providers more than others. For this reason there is no need for a competition assessment.

As with the previous procurement Directives it replaces, this Directive is intended to facilitate greater competition by opening up markets.

The change to implement the Alcatel judgment will increase transparency in public procurement and thereby facilitate greater competition by further opening up procurement markets.

⁵ See <http://www.ogc.gov.uk/index.asp?id=1000084>

8. Enforcement, sanctions and monitoring

The EC Public Sector Remedies Directive⁶ requires Member States to provide for effective and rapid domestic review mechanisms addressing alleged breaches of EC public procurement law and national implementing rules. This Remedies Directive is, therefore, a crucial element in ensuring the effective application of the procurement rules set out in this Directive.

Under the Remedies Directive, Member States must have bodies which are empowered to review the application of public procurement procedures, to administer quick and effective interim measures to suspend such procedures or decisions, to prevent and correct infringements and, ultimately, to set aside⁷ unlawful decisions and award damages. These bodies can be judicial or administrative in nature and Member States have a certain amount of flexibility in how they choose to administer their domestic review proceedings. In the UK, the judicial model was chosen. A tenderer who considers that a procurement has been conducted in breach of the EC procurement directives can take proceedings to the High Court (Court of Session in Scotland). A review of the Remedies Directive is planned for 2006.

In monitoring and reviewing the application of the Public Sector Procurement Directive and Member States' implementing Regulations, the Commission will be assisted by the Advisory Committee for Public Contracts made up of representatives from Member States. OGC represents the UK at this committee and is responsible for implementing Procurement Directives into UK law.

Both the existing and new Procurement Directives require Member States to supply the Commission with statistics on public procurement with the objective of monitoring the effect of these public procurement rules. Accordingly, the draft Regulations include a requirement for contracting authorities to send these statistics to OGC, for onward transmission to the Commission.

9. Implementation and delivery plan

The Regulations will come into force on 31 January 2006 - the EU deadline for Member States to implement the Directive - after being laid in Parliament for 21 days.

The Regulations will be published on the website of the Office of Public Sector Information, and available on OGC's website⁸. We will also ensure further publicity in relevant publications.

OGC's Training Module⁹ is free and gives detailed guidance on much of the new Directive. In addition, guidance for public procurers will be published on the OGC website and circulated to Government departments for internal distribution and onward transmission to NDPBs, agencies and other relevant bodies.

⁶ Directive 89/665/EEC

⁷ A 'set aside' is when a decision is declared illegal and to all intents and purposes null and void.

⁸ A link to the Regulations will be on the following page of the OGC website: <http://www.ogc.gov.uk/index.asp?id=1000084>

⁹ See <http://www.ogc.gov.uk/index.asp?docid=1002185>.

10. Post-implementation review

As stated above, in reviewing the application of the Directive and Member States' implementing Regulations, the Commission will be assisted by the Advisory Committee for Public Contracts made up of representatives from Member States.

OGC will also review guidance on the Regulations intermittently, and in response to feedback, to ensure it reflects recent European Court of Justice case law and best practice developments.

The next opportunity to review the rules on the mandatory standstill period, implemented to comply with the Alcatel judgment, will be during the proposed revision of the Remedies Directive. The European Commission is not expected to make its initial proposals to EU Member States on this before Spring 2006.

11. Summary and recommendation

As this Directive has been adopted at the European level, there is no option but to implement it into UK law by the deadline of 31 January 2006.

The impact of this Directive is limited because:

- many of the provisions and rules in the new Directive are already in place in the existing Directives;
- many of the new provisions are permissive. They allow contracting authorities the choice to make use of them;
- many of the new provisions reflect existing best practice in the UK, and are already in use;
- the requirements of this Directive are obligations on contracting authorities and not the private sector.

There are a number of Articles in the Directive where Member States have the option to implement particular provisions. We believe it is right for contracting authorities to have these provisions available, and that is reflected in the implementing Regulations.

In order to comply with the Alcatel judgment, it is also necessary to introduce, in the implementing Regulations, a standstill period between contract award and contract conclusion in procurements covered by the full scope of the Directive. This decision reflects detailed negotiations with the European Commission.

12. Declaration and publication

12.1 Ministerial declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Date: -----

12.2 Contact point

Please direct any queries to:

OGC Service Desk
Rosebery Court
St Andrew's Business Park
Norwich
NR7 0HS

Tel: 0845 000 4 999

Email: ServiceDesk@ogc.gsi.gov.uk.

12.3 Publication

This Regulatory Impact Assessment will be available on the OGC website at <http://www.ogc.gov.uk/index.asp?id=1000084>.

TRANSPOSITION TABLE
PUBLIC CONTRACTS AWARDED BY PUBLIC SECTOR BODIES
DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 31ST MARCH 2004
DRAFT PUBLIC CONTRACTS REGULATIONS

Directive Article	Implementation
Article 1 – Definitions	Regulation 2 – Interpretation
Article 2 – Principles of awarding contracts	Regulation 4(3) – Economic operators
Article 3 – Granting of special or exclusive rights: non discrimination clause	Regulation 46 – Public service bodies
Article 4 – Economic operators	Regulation 28 – Consortia and Regulation 29 – Corporations
Article 5 – Conditions relating to agreements concluded within the World Trade Organisation	Regulation 4(2) - Economic operators
Article 6 – Confidentiality	Regulation 43 – Confidentiality of information
Article 7 – Threshold amounts for public contacts	Regulation 8(1) to (6) – Thresholds

Directive Article	Implementation
Article 8 – Contracts subsidised by more than 50% by contracting authorities	Regulation 34 – Subsidised public works contracts and public service contracts
Article 9 – Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems	Regulation 8(7) to (18) - Thresholds
Article 10 – Defence procurement	Regulation 6(d) – General exclusions
Article 11 – Public contracts and framework agreements awarded by central purchasing bodies	Regulation 22 – Central purchasing bodies
Article 12 – Contracts in the water, energy, transport and postal services sectors	Regulation 6(a) – General exclusions
Article 13 – Specific exclusions in the field of telecommunications	Regulation 6(b) – General exclusions
Article 14 – Secret contracts and contracts requiring special security measures	Regulation 6(c) – General exclusions

Directive Article	Implementation
Article 15 – Contracts awarded pursuant to international rules	Regulation 6(e) - General exclusions
Article 16 – Specific exclusions	Regulation 6(f), (g), (h), (i), (j), (k), (l), - General exclusions
Article 17 – Service concessions	Regulation 6(n) – General exclusions
Article 18 – Service contracts awarded on the basis of an exclusive right	Regulation 6(m) – General exclusions
Article 19 – Reserved contracts	Regulation 7 – Reserved contracts
Article 20 – Service contracts listed in Annex IIA	Regulation 2(2) – Interpretation and regulation 5(1) - Application
Article 21 – Service contracts listed in Annex IIB	Regulation 2(2) – Interpretation and regulation 5(1) - Application
Article 22 – Mixed contracts including services listed in Annex IIA and services listed in Annex IIB	Regulation 2(2) - Interpretation

Directive Article	Implementation
Article 23 – Technical specifications	Regulation 9 – Technical specifications in the contract document
Article 24 – Variants	Regulation 10 – Variants
Article 25 – Sub-contracting	Regulation 45 – Sub-contracting
Article 26 – Conditions for performance of contracts	Regulation 39 – Conditions for performance of contracts
Article 27 – Obligations relating to taxes, environmental protection, employment protection provisions and working conditions	Regulation 38 – Obligations relating to taxes, environmental protection, employment protection and working conditions
Article 28 – use of open, restricted and negotiated procedures of competitive dialogue	Regulation 12 – Selection of contract award procedures
Article 29 – Competitive dialogue	Regulation 18 – The competitive dialogue
Article 30 – Cases justifying use of the negotiated procedure with prior publication of contract notice	Regulation 13 – Selection of contract award procedures

Directive Article	Implementation
Article 31 – Cases justifying use of the negotiated procedure without publication of a contract notice	Regulation 14 – Selection of contract award procedures
Article 32 – Framework agreements	Regulation 19 – Framework agreements
Article 33 - Dynamic purchasing systems	Regulation 20 – Dynamic purchasing systems
Article 34 – Public works contracts: particular rules on subsidised housing schemes	Regulation 35 – Subsidised housing scheme works contracts
Articles 35 – Notices	Regulation 11 – Prior information notices and Regulation 15 – The open procedure Regulation 16 – The restricted procedure Regulation 17 – The negotiated procedure and Regulation 18 – The competitive dialogue procedure Regulation 20 – Dynamic purchasing systems Regulation 31 – Contract award notice
Article 36 – Form and manner publication of notices	Regulation 42 – Publication of notices
Article 37 – Non-mandatory publication	Regulation 42(8) – Publication of notices

Directive Article	Implementation
Article 38 – Time limits for receipt of requests to participate and for receipt of tenders	Regulation 15 – The open procedure Regulation 16 – The restricted procedure Regulation 17 – The negotiated procedure and Regulation 18 – The competitive dialogue procedure
Article 39 – Open procedures: specifications, additional documents and information	Regulation 15 – The open procedure
Article 40 – Invitations to submit a tender, participate in the dialogue or negotiate	Regulation 16 – The restricted procedure Regulation 17 – The negotiated procedure and Regulation 18 – The competitive dialogue procedure
Article 41 – Informing candidates and tenderers	Regulation 32(1) to (7) Information about contract award procedures
Article 42 – Rules applicable to communication	Regulation 44 – Means of communication
Article 43 – Content of reports	Regulation 32(8) to (10) – Information about contract award procedures
Article 44 – Verification of the suitability and choice of participants and award of contracts	Regulation 15(11) and (12) – The open procedure Regulation 16(7) to (12) – The restricted procedure Regulation 17(9) to (14) and (24) – The negotiated procedure and Regulation 18(10) to (15) and (22) – The competitive dialogue

Directive Article	Implementation
	procedure
Article 45 – Personal situation of the candidate or tenderer	Regulation 23 – Criteria for the rejection of economic operators
Article 46 – Suitability to pursue the professional activity	Regulation 23(4)(j) – Criteria for the rejection of economic operators and Schedule 6 – Professional or Trade Registers
Article 47 – Economic and financial standing	Regulation 24 – Information as to economic and financial standing
Article 48 – Technical and/or professional ability	Regulation 25 – Information as to technical or professional ability
Article 49 – Quality assurance standards	Regulation 25(2)(m) and (5) – Information as to technical or professional ability
Article 50 – Environmental management standards	Regulation 25(2)(h) and (4) – Information as to technical or professional ability
Article 51 – Additional documentation and information	Regulation 26 – Supplementary information

Directive Article	Implementation
Article 52 – Official lists of approved economic operators and certification by bodies established under public or private law	Regulation 27 – Official lists of approved economic operators
Article 53 – Contract award criteria	Regulation 30 – Criteria for the award of public contract
Article 54 – Use of electronic auctions	Regulation 21 – Electronic auctions
Article 55 – Abnormally low tenders	Regulation 30(6) to (9) – Criteria for the award of a public contract
Article 56 – Scope	Regulation 36(2) – Public works concession contracts
Article 57 – Exclusion from the scope	Regulation 36(6) and (7) – Public works concession contracts
Article 58 – Publication of the notice concerning public works concessions	Regulation 36(8) – Public works concession contracts
Article 59 – Time Limit	Regulation 36(9) and (10) – Public works concession contracts
Article 60 – Subcontracting	Regulation 37(1) – Sub-contracting the work or works to be carried

Directive Article	Implementation
	out under a public works concession contract
Article 61 – Awarding additional works to the concessionaire	Regulation 36 – Public works concession contracts
Article 62 – Applicable rules	Regulation 37(2) – Sub-contracting the work or works to be carried out under a public works concession contract
Article 63 – Advertising rules: threshold and exceptions	Regulation 37(3), (11) and (12) – Sub-contracting the work or works to be carried out under a public works concession contract
Article 64 – Publication of the notice	Regulation 37(3) - Sub-contracting the work or works to be carried out under a public works concession contract
Article 65 – Time limit for the receipt of requests to participate and receipt of tenders	Regulation 37(3) - Sub-contracting the work or works to be carried out under a public works concession contract
Article 66 – General provisions	Regulation 33(1) – Design contests
Article 67 – Scope	Regulation 33(2) to(5) – Design contests
Article 68 – Exclusions from the scope	Regulation 33(6) – Design contests

Directive Article	Implementation
Article 69 – Notices	Regulation 33(7), (16) and (17) – Design contests
Article 70 – Form and manner of publication of notices of contents	Regulation 33(7) – Design contests
Article 71 – Means of communication	Regulation 33(11) to (13) – Design contests
Article 72 – Selection of competitors	Regulation 33(14) – Design contests
Article 73 – Composition of the jury	Regulation 33(15)(a) and (b) – Design contests
Article 74 – Decisions of the jury	Regulation 33(15)(c) to (g) – Design contests
Article 75 – Statistical obligations	Regulation 40(1) – Statistical and other reports
Article 76 – Content of statistical report	Regulation 40 – Statistical and other reports

Directive Article	Implementation
Article 77 – Advisory Committee	Implementation is not required
Article 78 – Revision of the thresholds	Implementation is not required
Article 79 – Amendments	Implementation is not required
Article 80 – Implementation	Implementation is not required
Article 81 – Monitoring mechanisms	Implementation is not required

Directive Article/Annex	Implementation
Article 82 – Repeals	Implementation is not required
Article 83 – Entry into force	Implementation is not required
Article 84 – Addressees	Implementation is not required
Annex I – List of activities referred to in Article 1(2)(b)	Regulation 2(1) – Interpretation and Schedule 2 – Activities constituting works
Annex IIA – Services referred to in Article 1(2)(d)	Regulation 2 – Interpretation and Schedule 3 – Categories of services
Annex IIB – Services referred to in Article 1(2)(d)	Regulation 2 – Interpretation and Schedule 3 – Categories of services
Annex III – List of bodies and categories of bodies governed by public law referred to in the second sub-paragraph of Article 1(9)	Regulation 3 – Contracting authorities and Schedule 1 – GPA contracting authorities
Directive Annex	Implementation

Annex IV – Central Government authorities	Regulation 3 – Contracting authorities and Schedule 1 – GPA Annex I contracting authorities
Annex V – List of products referred to in Article 7 with regard to contracts awarded by contracting authorities in the field of defence	Regulation 8 – Thresholds and Schedule 5 – Goods for the purposes of thresholds
Annex VI – Definition of certain technical specifications	Regulation 9 – Technical specification in the contract documents
Annex VIIA – Information to be included in public contract notices	References to Annexes in Regulations
Annex VIIB – Information which must appear in public works concession notices	References to Annexes in Regulations
Annex VIIC – Information which must appear in works contract notices	References to Annexes in Regulations
Directive/Annex	Implementation
Annex VIID – Information which must appear in design contest notices	References to Annexes in Regulations

Annex VIII – Features concerning publication	Regulation 11 – Prior information notices and Regulation 42 – Publication of notices
Annex IXA– Registers – public works contracts	Regulation 23(4)(j) - Criteria for the rejection of economic operators and Schedule 6 – Professional and trade registers
Annex IXB – Registers – public supply contracts	Regulation 23(4)(j) – Criteria for the rejection of economic operators and Schedule 6 – Professional and trade registers
Annex IXC – Registers – public service contracts	Regulation 23(4)(j) – Criteria for the rejection of economic operators and Schedule 6 – Professional and trade registers
Directive Annex	Implementation
Annex X – Requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests	Regulation 44(6) – Means of Communication

Annex XI – Deadlines for transposition and application (Article 80)	Implementation is not required
Annex XII – Correlation table	Implementation is not required