

EXPLANATORY MEMORANDUM TO
THE UTILITIES CONTRACTS REGULATIONS 2006.

2006 No. 6

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 - Utilities Regulations 2006

1. Title

The Utilities Contracts Regulations 2006 implement Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

2. Purpose and Intended Effect of the Measure

2.1 Objective

This Directive sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain thresholds for works, services and supplies by utilities. The procurement rules seek to ensure that utilities award contracts in an efficient and non-discriminatory manner. Directive 2004/17/EC aims to simplify, clarify and modernise the existing EU rules for procurement¹ by the utilities. There are new provisions to take account of modern procurement techniques such as the use of electronic procurement. 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.

The new Utilities Directive (2004/17/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 for works, services and supplies, as defined in the Directive.

The Directive has already been adopted at European level and cannot now be changed. Where appropriate the Regulations include some clarification and

¹ The Utilities Directive 93/38/EEC as amended by Directive 98/4/EC and implemented into UK law as The Utilities Contracts Regulations 1996, amended by The Utilities Contracts (Amendment) Regulations 2001 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

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 Utilities Contracts (Scotland) Regulations 2006.

2.4 Rationale for Government intervention

This Directive re-enacts most of the provisions in the existing Directives, while simplifying, clarifying and modernising them. It will benefit utilities 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 utilities and their suppliers, and the simplification will reduce the burden on all in terms of adhering to the requirements of the Directive.

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.

The utilities regime has always allowed for more flexibility than the public sector regime and already provides for frameworks. Many of the new elements of this Directive are in any case permissive, in that the contracting entities have the choice to make use of them. It is not compulsory for contracting entities to use new facilities, such as e-auctions, but if they do choose to, they must follow the rules set out in the Directive. In addition, many of the new facilities are already being used in Member States, such as with 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 utilities, 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 Utilities 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, utilities are bound by the existing procurement Regulations which implement the previous Utilities Procurement Directive⁴. 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 The Utilities Directive 93/38/EEC as amended by Directive 98/4/EC and implemented into UK law as The Utilities Contracts Regulations 1996, amended by The Utilities Contracts (Amendment) Regulations 2001.

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 15	Dynamic purchasing systems
Article 28	Reserved contracts and sheltered workshops
Article 29	Central purchasing bodies
Article 30	Exemption mechanism
Article 37	Sub-contracting
Article 39	Obligations relating to taxes, environmental protection etc
Article 54	Criteria for qualitative selection
Article 56	Electronic auctions

5. Costs and Benefits

5.1 Business sectors affected

The Directive does not impose any burdens on business generally and the savings from increased competition and structured procurement will considerably outweigh the costs of compliance.

The current Utilities Directive already applies to operators in the energy, water, transport and telecommunications sectors. There is a lighter regime for oil and gas operators. Postal services have been brought in to the new Directive, while telecommunications have been removed. The Directive contains exclusions and there is a new provision allowing utilities operating in areas directly exposed to competition to apply for exemption. The Directive will not bear directly on the undertakings who wish to provide the utilities with supplies, works and services.

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 allow for greater flexibility in the public procurement

process.

5.3 Compliance costs

The utilities are already complying with most of the new Directive. It allows for up-to-date, useful tools such as electronic procurement, which are intended to create savings and are therefore of benefit to utilities.

In recognition of the introduction of effective competition in the telecommunications sector across the EU, procurement by telecommunications operators has been removed from the scope of the Directive. Consequently, compliance costs have been removed from these operators. In addition, some utilities have expressed an interest in taking advantage of an exclusion mechanism, introduced in this Directive, whereby contracts for activities, which are directly exposed to competition on markets to which access is not restricted, can be removed from the application of the Directive. Written guidance on this provision will be published on the OGC website⁵. Again, this should create a reduction of burdens overall.

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 website of the Office of Government Commerce⁶. 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 procurers in the utilities sector rather than on 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.

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

⁶ See <http://www.ogc.gov.uk/index.asp?id=1000084>

7. Competition assessment

This Directive binds only the utilities sector. The Directive sets out the procedures to follow for utilities' 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, the 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.

8. Enforcement and sanctions

The Utilities Remedies Directive⁷ 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 aside⁸ unlawful decisions and award damages. These bodies can be judicial or administrative in nature and Member States have a certain degree 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 Utilities 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 the 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.

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.

⁷ Directive 92/13/EEC

⁸ A 'set aside' is when a decision is declared illegal and to all intents and purposes null and void.

The Regulations will be published on the website of the Office of Public Sector Information, and available on OGC's website⁹. We will also ensure further publicity in relevant publications.

OGC's Training Module¹⁰ 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 as appropriate.

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 entities 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 entities and not the wider 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 entities 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

⁹ A link to the Regulations will be on the following page of the OGC website:

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

¹⁰ See <http://www.ogc.gov.uk/index.asp?docid=1002185>.

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
 CONTRACTS AWARDED BY UTILITIES
 DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND
 OF THE COUNCIL OF 31st MARCH 2004
 DRAFT UTILITIES CONTRACTS REGULATIONS**

Directive Article	Implementation
Article 1 – Definitions	Regulation 2 – Interpretation
Article 2 – Contracting entities	Regulation 3 – Utilities
Article 3- Gas, heat and electricity	Regulation 3 – Utilities and Schedule 1
Article 4 – Water	Regulation 3 – Utilities and Schedule 1
Article 5 – Transport services	Regulation 3 – Utilities and Schedule 1
Article 6 – Postal services	Implementation not required

Directive Article	Implementation
Article 7 – Exploration for, or extraction of, oil, gas, coal, or other solid fuels, as well as ports and airports	Regulation 3 – Utilities and Schedule 1
Article 8 – Lists of contracting entities	Implementation is not required
Article 9 – Contracts covering several activities	Regulation 5 – Application
Article 10 – Principles of awarding contracts	Regulation 4(3) – Economic operators
Article 11 – Economic operators	Regulation 28 – Consortia and Regulation 29 - Corporations
Article 12 – Conditions relating to agreements concluded within the World Trade Organisation	Regulation 4(2) – Economic operators
Article 13 – Confidentiality	Regulation 41 – Confidentiality of information
Article 14 – Framework agreements	Regulation 18 – Framework agreements

Directive Article	Implementation
Article 15 – Dynamic purchasing systems	Regulation 19 – Dynamic purchasing systems
Article 16 – Contract thresholds	Regulation 11 – Thresholds
Article 17 – Methods of calculating the estimated value of contracts, framework agreements and dynamic systems	Regulation 11 – Thresholds
Article 18 – Works and service concessions	Regulation 6(o) – General exclusions
Article 19 – Contracts awarded for purposes of resale or lease to third parties	Regulation 6(c) – General exclusions
Article 20 – Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country	Regulation 6(b) – General exclusions

Directive Article	Implementation
Article 21 – Contracts which are secret or require special security measures	Regulation 6(d) – General exclusions
Article 22 – Contracts awarded pursuant to international rules	Regulation 6(e) – General exclusions
Article 23 – Contracts awarded to an affiliated undertaking, to a joint venture or to a contracting entity forming part of a joint venture	Regulation 7 – Exclusion of contracts awarded to affiliated undertakings or joint ventures
Article 24 – Contracts relating to certain services excluded from the scope of this Directive	Regulation 6(j), (k), (l), (m) & (n) – General exclusions
Article 25 – Service contracts awarded on the basis of an exclusive right	Regulation 6(i) – General exclusions
Article 26 – Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy	Regulation 6(f) & (g) – General exclusions

Directive Article	Implementation
Article 27 – Contracts subject to special arrangements	Regulation 8 – Exemption in respect of certain utilities operating in the energy sector
Article 28 – Reserved contracts	Regulation 10 – Reserved contracts
Article 29 – Contracts and framework agreements awarded by central purchasing bodies	Regulation 21 – Central purchasing bodies
Article 30 – Procedure for establishing whether a given activity is directly exposed to competition	Regulation 9 – Exemption of contracts where activity is directly exposed to competition
Article 31 – Service contracts listed in Annex XVII A	Regulation 5 – Application
Article 32 – Service contracts listed in Annex XVII B	Regulation 5 – Application
Article 33 – Mixed service contracts including services listed in Annex XVII A and services listed in Annexes XVII B	Regulation 2(2) - Interpretation

Directive Article	Implementation
Article 34 – Technical specifications	Regulation 12 – Technical specifications in contract documents
Article 35 – Communication of technical specifications	Regulation 12 – Technical specifications in contract documents
Article 36 - Variants	Regulation 13 – Variants
Article 37 – Subcontracting	Regulation 43 – Sub-contracting
Article 38 – Conditions for performance of contracts	Regulation 36 –Conditions for performance of contracts
Article 39 – Obligations relating to taxes, environmental protection, employment protection provisions and working conditions	Regulation 35 – Obligations relating to taxes, environmental protection, employment protection and working conditions
Article 40 – Use of open, restricted and negotiated procedures	Regulation 14 – The open, restricted and negotiated procedures and Regulation 17 – Award without a call for competition

Directive Article	Implementation
Article 41 – Periodic indicative notices and notices on the existence of a system of qualification	Regulation 15 – Periodic indicative notices and Regulation 25 – Qualification system
Article 42 – Notices used as a means of calling for competition	Regulation 16 – Call for competition
Article 43 – Contract award notices	Regulation 32 – Contract award notices
Article 44 – Form and manner of publication of notices	Regulation 40 – Publication of notices
Article 45 – Time-limits for the receipt of requests to participate and for the receipt of tenders	Regulation 22 – Time limits
Article 46 – Open procedures: specifications, additional documents and information	Regulation 22 – Time limits
Article 47 – Invitations to submit a tender or to negotiate	Regulation 22 – Time limits

Directive Article	Implementation
Article 48 – Rules applicable to communication	Regulation 42 – Means of communication
Article 49 – Information to applicants for qualification, candidates and tenderers	Regulation 33 – Information about contract award procedures and Regulation 25 – Qualification system
Article 50 – Information to be stored concerning awards	Regulation 37 – Preservation of records
Article 51 – General provisions	Regulation 23 – General
Article 52 – Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence	Regulation 24 – Mutual recognition concerning administrative, technical or financial conditions
Article 53 – Qualification systems	Regulation 25 – Qualification system
Article 54 – Criteria for qualitative selection	Regulation 26 – Criteria for rejection of economic operators and Regulation 27 - Criteria for selection of economic operators

Directive Article	Implementation
Article 55 – Contract award criteria	Regulation 30 – Criteria for the award of a contract
Article 56 – Use of electronic auctions	Regulation 20 – Electronic auctions
Article 57 – Abnormally low tenders	Regulation 30(6) - Criteria for the award of a contract
Article 58 – Tenders comprising products originating in third countries	Regulation 31- Rejection of third country tenders
Article 59 – Relations with third countries as regards works, supplies and service contracts	Implementation is not required
Article 60 – General provision	Regulation 34(1), (7) & (8) – Design contests
Article 61 – Thresholds	Regulation 34(2), (3) & (4) – Design contests

Directive Article	Implementation
Article 62 – Design contests excluded	Regulation 34 (5) – Design contents
Article 63 – Rules on advertising and transparency	Regulation 34(6), (9) & (16)– Design contests
Article 64 – Means of communication	Regulation 34(10), (11) & (12) – Design contests
Article 65 – Rules on the organisation of design contests, the selection of participants and the jury	Regulation 34(13) – Design contests
Article 66 – Decisions of the jury	Regulation 34 (14) & (15) – Design contests
Article 67 – Statistical obligations	Regulation 38 – Statistical and other reports
Article 68 – Committee procedure	Implementation is not required
Article 69 – Revision of the thresholds	Implementation is not required

Directive Article/Annex	Implementation
Article 70 – Amendments	Implementation is not required
Article 71 – Implementation of the Directive	Implementation is not required
Article 72 – Monitoring mechanisms	Implementation is not required
Article 73 – Repeal	Implementation is not required
Article 74 – Entry into force	Implementation is not required
Article 75 – Addressees	Implementation is not required
Annex 1 – Contracting entities in the sectors of transport or distribution of gas or heat	Schedule 1 – Utilities and Activities
Annex II – Contracting entities in the sectors of production, transport or distribution of electricity	Schedule 1 – Utilities and Activities

Directive Annex	Implementation
Annex III - – Contracting entities in the sectors of production, transport or distribution of drinking water	Schedule 1 – Utilities and Activities
Annex IV – Contracting entities in the field of rail services	Schedule 1 – Utilities and Activities
Annex V – Contracting entities in the field of urban railway, tramway, trolleybus or bus services	Schedule 1 – Utilities and Activities
Annex VI – Contracting entities in the postal services sector	Schedule 1 – Utilities and Activities
Annex VII – Contracting entities in the sectors of exploration for and extraction of oil or gas	Schedule 1 – Utilities and Activities
Annex VIII – Contracting entities in the sectors of exploration for and extraction of coal and other solid fuels	Schedule 1 – Utilities and Activities

Directive Annex	Implementation
Annex IX – Contracting entities in the field of maritime or inland port or other terminal facilities	Schedule 1 – Utilities and Activities
Annex X – Contracting entities in the field of airport installations	Schedule 1 – Utilities and Activities
Annex XI – List of community legislation referred to in Article 30(3)	References to legislation in Regulation 9(3)(c) – Exemption of contracts where activity is directly exposed to competition
Annex XII – List of activities as set out in Article 1(2), (b)	Schedule 2 – Activities constituting works
Annex XIII – Information to be included in contract notices A. Open procedures B. Restricted procedures C. Negotiated procedures D. Simplified contract notice for use in a dynamic purchasing system	References to Annexes in Regulations

Directive Annex	Implementation
Annex XIV – Information to be included in the notice on the existence of a qualification system	References to Annex in Regulations
Annex XV A – Information to be included in the periodic indicative notice	References to Annex in Regulations
Annex XV B – Information to be included in notices of publication of a periodic notice on a buyer profile not used as a means of calling for competition	References to Annex in Regulations
Annex XVI - Information to be included in the contract award notice	References to Annex in Regulations
Annex XVII A – Services within the meaning of Article 31	Schedule 3 – Categories of services
Annex XVII B – Services within the meaning of Article 32	Schedule 3 – Categories of services

Directive Annex	Implementation
Annex XVIII – Information to be included in the design contest notices	References to Annex in Regulations
Annex XIX – Information to be included in the results of design contest notices	References to Annex in Regulations
Annex XX - Features concerning publication	References to Annex in Regulations
Annex XXI - Definition of certain technical specifications	Regulation 12 – Technical specifications in contract documents
Annex XXII - Summary table of the time limits laid down in Article 45	Implementation is not required
Annex XXIII - International labour law provisions within the meaning of Article 59(4)	Implementation is not required

Directive Annex	Implementation
Annex XXIV – Requirements relating to devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests	Regulation 42 – Means of communication
Annex XXV – Time limits for transposition and implementation	Implementation is not required
Annex XXVI – Correlation Table	Implementation is not required