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**L.N. 178 of 2005**

**Public Procurement of Entities operating in the Water, Energy, Transport and  
Postal Services Sectors Regulations, 2005**

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**L.N. 178 of 2005**

**FINANCIAL ADMINISTRATION AND AUDIT ACT  
(CAP. 174)**

**Public Procurement of Entities operating in the Water, Energy,  
Transport and Postal Services Sectors Regulations, 2005**

BY VIRTUE of the powers conferred by article 4 of the Financial Administration and Audit Act, the Prime Minister and Minister of Finance has made the following regulations:-

**TITLE I**

**GENERAL PROVISIONS APPLICABLE TO  
CONTRACTS AND DESIGN CONTESTS**

**CHAPTER I**

**Basic terms**

1. (1) The title of these regulations is the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2005. Citation, commencement and definitions.

(2) These regulations shall come into force on the 3rd June, 2005.

(3) For the purposes of these regulations, and unless the context otherwise requires, the following definitions shall apply:-

"candidate" means an economic operator who has sought an invitation to take part in a restricted or negotiated procedure;

"Common Procurement Vocabulary (CPV)" means the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002 of 5 November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) while ensuring equivalence with the other existing nomenclatures:

Provided that, in the event of varying interpretations of the scope of these regulations, owing to possible differences between the CPV and NACE nomenclatures listed in Schedule XII or between the CPV and CPC (provisional version) nomenclatures listed in Schedules XVIII or XIX, the NACE or the CPC nomenclature respectively shall take precedence;

"contractor", "supplier" or "service provider" mean either a



natural or a legal person, or a contracting entity within the meaning of regulation 2(2)(a) or (b), or a group of such persons and, or entities which offers on the market, respectively, the execution of works and, or a work, products or services;

"design contests" are those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes;

"dynamic purchasing system" is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entity, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification;

"economic operator" shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interests of simplification; "tenderer" is an economic operator who submits a tender;

"electronic auction" is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and, or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods. Consequently, certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions;

"electronic means" means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

"framework agreement" is an agreement between one or more contracting entities referred to in regulation 2(2) and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged;

"open, restricted and negotiated procedures" are the procurement procedures applied by contracting entities, whereby:

(a) in the case of open procedures, any interested economic operator may submit a tender;

(b) in the case of restricted procedures, any economic operator may request to participate and only candidates invited by the contracting entity may submit a tender;

(c) in the case of negotiated procedures, the contracting entity consults the economic operators of its choice and negotiates the terms of the contract with one or more of these;

"service concession" is a contract of the same type as a service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in that right together with payment;

"service contracts" are contracts other than works or supply contracts having as their object the provision of services referred to in Schedules XVIII or XIX:

Provided that a contract having as its object both products and services within the meaning of Schedules XVIII or XIX shall be considered to be a "service contract" if the value of the services in question exceeds that of the products covered by the contract:

Provided further that a contract having as its object services within the meaning of Schedules XVIII or XIX and including activities within the meaning of Schedule XII that are only incidental to the principal object of the contract shall be considered to be a service contract;

"supply contracts" are contracts other than those referred to in the definition of "works contracts", having as their object the purchase, lease, rental or hire-purchase, with or without the option to buy, of products:

Provided that a contract having as its object the supply of products, which also covers, as an incidental matter, siting and installation operations shall be considered to be a "supply contract";

"supply, works and service contracts" are contracts for pecuniary interest concluded in writing between one or more of the contracting entities referred to in regulation 2(2), and one or more contractors, suppliers, or service providers;

"works concession" is a contract of the same type as a works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in

that right together with payment;

"works contracts" are contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Schedule XII; or a work, or the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity; "work" means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function;

"written" or "in writing" means any expression consisting of words or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

## **CHAPTER II**

### **Definition of the activities and entities covered**

#### **Section 1**

##### **Entities**

Contracting  
entities.

**2. (1)** For the purposes of these regulations -

"a body governed by public law" means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
- having legal personality, and
- financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

"contracting authorities" are State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law;

"public undertaking" is any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the contracting authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital, or
- control the majority of the votes attaching to shares issued by the undertaking, or
- can appoint more than half of the undertaking's administrative, management or supervisory body.

(2) This regulation shall apply to contracting entities:

(a) which are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 3 to 7;

(b) which, when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in regulations 3 to 7, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of Malta.

(3) "Special or exclusive rights" mean rights granted by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in regulations 3 to 7 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

## **Section 2**

### **Activities**

**3.** (1) As far as gas and heat are concerned, these regulations shall apply to the following activities: Gas, heat and electricity.

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat; or

(b) the supply of gas or heat to such networks.

(2) The supply of gas or heat to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of subregulation (1) where:

(a) the production of gas or heat by the entity concerned is the unavoidable consequence of carrying out an activity other than those referred to in subregulation (1) or (3) of this regulation or in regulations 4 to 7; and

(b) supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than twenty per cent of the entity's turnover having regard to the average for the preceding three years, including the current year.

(3) As far as electricity is concerned, these regulations shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity; or

(b) the supply of electricity to such networks.

(4) The supply of electricity to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of subregulation (3) where:

(a) the production of electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in subregulations (1) or (3) of this regulation or in regulations 4 to 7; and

(b) supply to the public network depends only on the entity's own consumption and has not exceeded thirty per cent of the entity's total production of energy, having regard to the average for the preceding three years, including the current year.

Water.

**4.** (1) These regulations shall apply to the following activities:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or

(b) the supply of drinking water to such networks.

(2) These regulations shall also apply to contracts or design contests awarded or organised by entities which pursue an activity referred to in subregulation (1) and which:

(a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than twenty per cent of the total volume of water made available by such projects or irrigation or drainage installations, or

(b) are connected with the disposal or treatment of sewage.

(3) The supply of drinking water to networks which provide a service to the public by a contracting entity other than a contracting authority shall not be considered a relevant activity within the meaning of subregulation (1) where:

(a) the production of drinking water by the entity concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in regulations 3 to 7; and

(b) supply to the public network depends only on the entity's own consumption and has not exceeded thirty per cent of the entity's total production of drinking water, having regard to the average for the preceding three years, including the current year.

**5.** (1) (a) These regulations shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable. Transport services.

(b) As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of Malta, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

(2) These regulations shall not apply to entities providing bus transport services to the public which were excluded from the scope of Directive 93/38/EEC pursuant to Article 2(4) thereof.

**6.** (1) These regulations shall apply to activities relating to the provision of postal services or, on the conditions set out in subregulation (2)(c), other services than postal services. Postal services.

(2) For the purpose of these regulations and without prejudice to Directive 97/67/EC:

(a) "postal item": means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) "postal services": means services consisting of the clearance, sorting, routing and delivery of postal items. These services comprise:

- "reserved postal services": postal services which are or may be reserved on the basis of Article 7 of Directive 97/67/EC,

- "other postal services": postal services which may not be reserved on the basis of Article 7 of Directive 97/67/EC; and

(c) "other services than postal services": means services provided in the following areas:

- mail service management services (services both preceding and subsequent to despatch, such as "mailroom management services"),

- added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail),

- services concerning postal items not included in paragraph (a), such as direct mail bearing no address,

- financial services, as defined in category 6 of Schedule XVIII and in regulation 24(c) and including in particular postal money orders and postal giro transfers,

- philatelic services, and

- logistics services (services combining physical delivery and, or warehousing with other non-postal functions),

on condition that such services are provided by an entity which also provides postal services within the meaning of paragraph (b), first or second indent, and provided that the conditions set out in regulation 30(1) are not satisfied in respect of the services falling within those indents.

**7.** These regulations shall apply to activities relating to the exploitation of a geographical area for the purpose of:

(a) exploring for or extracting oil, gas, coal or other solid fuels, or

(b) the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

Exploration for, or extraction of, oil, gas, coal or other solid fuels, and provision of ports and airports.

**8.** The non-exhaustive lists of contracting entities within the meaning of these regulations are contained in Schedules I to X. Change to the said lists shall be notified to the Commission.

Lists of contracting entities.

**9.** (1) A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended:

Contracts covering several activities.

Provided that the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this regulation.

(2) If one of the activities for which the contract is intended is subject to this regulation and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this regulation without reference to these regulations.

(3) If one of the activities for which the contract is intended is subject to these regulations and the other is not subject to this regulation and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with these regulations.

## CHAPTER III

### General principles

**10.** Contracting entities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Principles of awarding contracts.



## TITLE II

### RULES APPLICABLE TO CONTRACTS

#### CHAPTER I

##### General provisions

Economic operators.

**11.** (1) Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of Malta, they would be required to be either natural or legal persons:

Provided that in the case of service and works contracts as well as supply contracts covering in addition services and, or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

(2) Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups may not be required by the contracting entities to assume a specific legal form; however, the group selected may be required to do so when it has been awarded the contract, to the extent to which this change is necessary for the satisfactory performance of the contract.

Conditions relating to agreements concluded within the World Trade Organisation.

**12.** For the purposes of the award of contracts by contracting entities, the conditions shall be as favourable as those which they grant to economic operators of third countries in implementation of an agreement concluded within the World Trade Organisation.

Confidentiality.

**13.** (1) In the context of provision of technical specifications to interested economic operators, of qualification and selection of economic operators and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

(2) Without prejudice to the provisions of these regulations, in particular those concerning the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in regulations 43 and 49, and in accordance with the laws of Malta, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as

confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

**14.** (1) Contracting entities may regard a framework agreement as a contract within the meaning of regulation 1(3) and award it in accordance with these regulations. Framework agreements.

(2) Where contracting entities have awarded a framework agreement in accordance with these regulations, they may avail themselves of regulation 40(3)(i) when awarding contracts based on that framework agreement.

(3) Where a framework agreement has not been awarded in accordance with these regulations, contracting entities may not avail themselves of regulation 40(3)(i).

(4) Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

**15.** (1) Contracting entities may use dynamic purchasing systems. Dynamic purchasing systems.

(2) In order to set up a dynamic purchasing system, contracting entities shall follow the rules of the open procedure in all its phases up to the award of the contracts to be concluded under this system. All tenderers who satisfy the selection criteria and have submitted an indicative tender which complies with the specification and any possible additional documents shall be admitted to the system; indicative tenders may be improved at any time provided that they continue to comply with the specification. With a view to setting up the system and to the award of contracts under that system, contracting entities shall use solely electronic means in accordance with regulation 48(2) to (5).

(3) For the purposes of setting up the dynamic purchasing system, contracting entities shall:

(a) publish a contract notice making it clear that a dynamic purchasing system is involved;

(b) indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

(c) offer by electronic means, on publication of the notice and until the system expires, unrestricted, direct and full

access to the specification and to any additional documents and shall indicate in the notice the internet address at which such documents may be consulted.

(4) (a) Contracting entities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in subregulation (2). They shall complete evaluation within a maximum of fifteen days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

(b) Contracting entities shall inform the tenderer referred to in paragraph (a) at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender.

(5) Each specific contract shall be the subject of an invitation to tender. Before issuing the invitation to tender, contracting entities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with subregulation (4), within a time limit that may not be less than fifteen days from the date on which the simplified notice was sent. Contracting entities may not proceed with tendering until they have completed evaluation of all the indicative tenders received within that time limit.

(6) (a) Contracting entities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end, they shall set a time limit for the submission of tenders.

(b) They shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation referred to in paragraph (a).

(7) A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases. Contracting entities may not resort to this system to prevent, restrict or distort competition. No charges may be billed to the interested economic operators or to parties to the system.

## CHAPTER II

### Thresholds and exclusion provisions

#### Section 1

#### Thresholds

**16.** Save where they are ruled out by the exclusions in regulations 19 to 26 or pursuant to regulation 30, concerning the pursuit of the activity in question, this section shall apply to contracts which have a value excluding value-added tax (VAT) estimated to be no less than the following thresholds:

Contract thresholds.

(a) Lm195,000 in the case of supply and service contracts;

(b) Lm2,448,000 in the case of works contracts.

**17.** (1) The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the contracting entity. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract. Where the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

Methods of calculating the estimated value of contracts, framework agreements and dynamic purchasing systems.

(2) Contracting entities may not circumvent these regulations by splitting works projects or proposed purchases of a certain quantity of supplies and, or services or by using special methods for calculating the estimated value of contracts.

(3) With regard to framework agreements and dynamic purchasing systems, the estimated value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement or system.

(4) For the purposes of regulation 16, contracting entities shall include in the estimated value of a works contract both the cost of the works and the value of any supplies or services necessary for the execution of the works, which they make available to the contractor.

(5) The value of supplies or services which are not necessary for the performance of a particular works contract may not be added to the value of the works contract when to do so would result in removing the procurement of those supplies or services from the scope of these regulations.

(6) (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in regulation 16, these regulations shall apply to the awarding of each lot.

However, the contracting entities may waive such application in respect of lots the estimated value of which, net of VAT, is less than Lm32,000 for services or Lm400,000 for works, provided that the aggregate value of those lots does not exceed twenty per cent of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying regulation 16.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in regulation 16, these regulations shall apply to the awarding of each lot.

However, the contracting entities may waive such application in respect of lots, the estimated value of which, net of VAT, is less than Lm32,000, provided that the aggregate cost of those lots does not exceed twenty per cent of the aggregate value of the lots as a whole.

(7) In the case of supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

(a) either the total actual value of the successive contracts of the same type awarded during the preceding twelve months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the twelve months following the initial contract;

(b) or the total estimated value of the successive contracts awarded during the twelve months following the first delivery, or during the financial year if that is longer than twelve months.

(8) The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the

supplies and services, regardless of their respective shares. The calculation shall include the value of the siting and installation operations.

(9) With regard to supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(a) in the case of fixed-term contracts, if that term is less than or equal to twelve months, the total estimated value for the term of the contract or, if the term of the contract is greater than twelve months, the total value including the estimated residual value;

(b) in the case of contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

(10) For the purposes of calculating the estimated contract value of service contracts, the following amounts shall, where appropriate, be taken into account:

(a) the premium payable, and other forms of remuneration, in the case of insurance services;

(b) fees, commissions, interest and other modes of remuneration, in the case of banking and other financial services;

(c) fees, commissions payable and other forms of remuneration, in the case of contracts involving design tasks.

(11) In the case of service contracts which do not indicate a total price, the value to be used as the basis for calculating the estimated contract value shall be:

(a) in the case of fixed-term contracts, if that term is less than or equal to forty-eight months: the total value for their full term;

(b) in the case of contracts without a fixed term or with a term greater than forty-eight months: the monthly value multiplied by 48.

## Section 2

### Contracts and concessions and contracts subject to special arrangements

#### SUBSECTION 1

Works and service concessions.

**18.** These regulations shall not apply to works and service concessions which are awarded by contracting entities carrying out one or more of the activities referred to in regulations 3 to 7, where those concessions are awarded for carrying out those activities.

#### SUBSECTION 2

### Exclusions applicable to all contracting entities and to all types of contract

Contracts awarded for purposes of resale or lease to third parties.

**19.** (1) These regulations shall not apply to contracts awarded for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity.

(2) The contracting entities shall notify the Commission at its request and the Director of all the categories of products or activities which they regard as excluded under subregulation (1).

(3) The Commission may periodically publish in the Official Journal of the European Union, and the Director may publish in the Gazette, for information purposes, lists of the categories of products and activities which it considers to be covered by this exclusion. In so doing, the Commission and the Director shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding information.

Contracts awarded for purposes other than the pursuit of an activity covered or for the pursuit of such an activity in a third country.

**20.** (1) These regulations shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in regulations 3 to 7 or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community.

(2) The contracting entities shall notify the Commission at its request and the Director of any activities which they regard as excluded under subregulation (1). The Commission may periodically publish in the Official Journal of the European Union and the Director may publish in the Gazette, for information purposes, lists of the categories of activities which it considers to be covered by this

exclusion. In so doing, the Commission and the Director shall respect any sensitive commercial aspects that the contracting entities may point out when forwarding this information.

**21.** These regulations shall not apply to contracts when they are declared to be secret by the competent authority in Malta, when their performance must be accompanied by special security measures in accordance with the laws of Malta, or when the protection of the basic security interests of Malta so requires.

Contracts which are secret or require special security measures.

**22.** These regulations shall not apply to contracts governed by different procedural rules and awarded:

Contracts awarded pursuant to international rules.

(a) pursuant to an international agreement concluded in accordance with the EU Treaty between Malta and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States. All agreements shall be communicated to the Commission;

(b) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of Malta or a third country;

(c) pursuant to the particular procedure of an international organisation.

**23.** (1) For the purposes of this regulation, "affiliated undertaking" means any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g) of the Treaty on consolidated accounts, or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of regulation 2(1)(b) or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

Contracts awarded to an affiliated undertaking, to a joint venture or to a contracting entity forming part of a joint venture.

(2) Insofar as the conditions in subregulation (3) are met, these regulations shall not apply to contracts awarded:

(a) by a contracting entity to an affiliated undertaking,  
or

(b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities



within the meaning of regulations 3 to 7, to an undertaking which is affiliated with one of these contracting entities.

(3) Subregulation (2) shall apply:

(a) to service contracts provided that at least eighty per cent of the average turnover of the affiliated undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated;

(b) to supplies contracts provided that at least eighty per cent of the average turnover of the affiliated undertaking with respect to supplies for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;

(c) to works contracts provided that at least eighty per cent of the average turnover of the affiliated undertaking with respect to works for the preceding three years derives from the provision of such works to undertakings with which it is affiliated.

When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in paragraphs (a), (b) or (c) is credible, particularly by means of business projections.

Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(4) These regulations shall not apply to contracts awarded:

(a) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of regulations 3 to 7, to one of these contracting entities, or

(b) by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting entities, which form it,

will be part thereof for at least the same period.

(5) Contracting entities shall notify to the Commission, at its request, and the Director at his request, the following information regarding the application of subregulations (2), (3) and (4):

(a) the names of the undertakings or joint ventures concerned,

(b) the nature and value of the contracts involved,

(c) such proof as may be deemed necessary by the Commission or the Director that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of this regulation.

### **SUBSECTION 3**

#### **Exclusions applicable to all contracting entities, but to service contracts only**

**24.** These regulations shall not apply to service contracts for:

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to these regulations;

(b) arbitration and conciliation services;

(c) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting entities to raise money or capital;

(d) employment contracts;

(e) research and development services other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

Contracts relating to certain services excluded from the scope of these regulations.

Service contracts awarded on the basis of an exclusive right.

**25.** These regulations shall not apply to service contracts awarded to an entity which is itself a contracting authority within the meaning of regulation 2(1)(a) or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

#### **SUBSECTION 4**

##### **Exclusions applicable to certain contracting entities only**

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.

**26.** These regulations shall not apply:

(a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities referred to in regulation 4(1);

(b) to contracts for the supply of energy or of fuels for the production of energy, if awarded by contracting entities engaged in an activity referred to in regulation 3(1) or (3) or regulation 7(a).

#### **SUBSECTION 5**

##### **Contracts subject to special arrangements and the general procedure in case of direct exposure to competition**

Reserved contracts.

**27.** Contracting Authorities may reserve the right to participate in contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

Notice for competition

**28.** The notice used to make the call for competition shall make reference to the provisions of regulation 27.

Contracts and framework agreements awarded by central purchasing bodies.

**29.** (1) Contracting entities may purchase works, supplies and, or services from or through a central purchasing body.

(2) Contracting entities which purchase works, supplies and, or services from or through a central purchasing body in the cases set out in regulation 1, in the definition of "open, restricted and negotiated procedures", shall be deemed to have complied with these regulations insofar as the central purchasing body has complied with it or, where appropriate, with the other parts of this regulation.

**30.** (1) Contracts intended to enable an activity mentioned in regulations 3 to 7 to be carried out shall not be subject to these regulations if the activity is directly exposed to competition on markets to which access is not restricted.

Procedure for establishing whether a given activity is directly exposed to competition.

(2) For the purposes of subregulation (1), the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria that are in conformity with the Treaty provisions on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question.

(3) (a) For the purposes of subregulation (1), access to a market shall be deemed not to be restricted if Malta has implemented and applied the provisions of Community legislation mentioned in Schedule XI.

(b) If free access to a given market cannot be presumed on the basis of paragraph (a), it must be demonstrated that access to the market in question is free *de facto* and *de jure*.

(4) (a) When in compliance with subregulations (2) and (3), subregulation (1) is applicable to a given activity, the contracting entity shall notify the Commission and inform it of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in subregulation (1), where appropriate together with the position adopted by an independent national authority that is competent in relation to the activity concerned.

(b) Contracts intended to enable the activity concerned to be carried out shall no longer be subject to these regulations if the Commission:

- has adopted a Decision establishing the applicability of subregulation (1) in accordance with subregulation (6) and within the period it provides for, or
- has not adopted a Decision concerning such applicability within that period.

(c) However, where free access to a given market is presumed on the basis of subregulation (3)(a), and where an independent national authority that is competent in the activity concerned has established the applicability of subregulation (1), contracts intended to enable the activity concerned to be carried out shall no longer be subject to these regulations if the Commission has

not established the inapplicability of subregulation (1) by a Decision adopted in conformity with subregulation 6 and within the period it provides for.

(5) (a) Contracting entities may ask the Commission to establish the applicability of subregulation (1) to a given activity by a Decision in conformity with subregulation (6). In such a case, the Commission shall immediately inform Malta which shall, taking account of subregulations (2) and (3), inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in subregulation (1), where appropriate together with the position adopted by an independent national authority that is competent in the activity concerned.

(b) The Commission may also begin the procedure for adoption of a Decision establishing the applicability of subregulation (1) to a given activity on its own initiative. In such a case, the Commission shall immediately inform the Member State concerned.

(c) If, at the end of the period laid down in subregulation (6), the Commission has not adopted a Decision concerning the applicability of subregulation (1) to a given activity, subregulation (1) shall be deemed to be applicable.

(6) For the adoption of a Decision under this regulation, the Commission shall be allowed a period of three months commencing on the first working day following the date on which it receives the notification or the request. However, this period may be extended once by a maximum of three months in duly justified cases, in particular if the information contained in the notification or the request or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. This extension shall be limited to one month where an independent national authority that is competent in the activity concerned has established the applicability of subregulation (1) in the cases provided for under subregulation (4)(c).

When an activity in a given Member State is already the subject of a procedure under this regulation, further requests concerning the same activity in the same Member State before the expiry of the period opened in respect of the first request shall not be considered as new procedures and shall be treated in the context of the first request.

The Commission shall adopt detailed rules for applying subregulations (4), (5) and (6).

These rules shall include at least:

(a) the publication in the Official Journal, for information, of the date on which the three-month period referred to in the first paragraph of this subregulation begins, and in case this period is prolonged, the date of prolongation and the period by which it is prolonged;

(b) publication of the possible applicability of subregulation (1) in accordance with subregulation (4)(b) or (c) or in accordance with subregulation (5); and

(c) the arrangements for forwarding positions adopted by an independent authority that is competent in the activity concerned, regarding questions relevant to subregulations (1) and (2).

### CHAPTER III

#### Rules applicable to service contracts

**31.** Contracts which have as their object services listed in Schedule XVIII shall be awarded in accordance with regulations 34 to 59. Service contracts listed in Schedule XVIII.

**32.** Contracts which have as their object services listed in Schedule XIX shall be governed solely by regulations 34 and 43. Service contracts listed in Schedule XIX.

**33.** Contracts which have as their subject-matter services listed both in Schedule XVIII and in Schedule XIX shall be awarded in accordance with regulations 34 to 59 where the value of the services listed in Schedule XVIII is greater than the value of the services listed in Schedule XIX. In other cases, contracts shall be awarded in accordance with regulations 34 and 43. Mixed service contracts including services listed in Schedule XVIII and services listed in Schedule XIX.

### CHAPTER IV

#### Specific rules governing specifications and contract documents

**34.** (1) Technical specifications as defined in point 1 of Schedule XXIII shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users. Technical specifications.

(2) Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to

the opening up of public procurement to competition.

(3) Without prejudice to legally binding national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

(a) either by reference to technical specifications defined in Schedule XXIII and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when these do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words "or equivalent"; or

(b) in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract; or

(c) in terms of performance or functional requirements as mentioned in paragraph (b), with reference to the specifications mentioned in paragraph (a) as a means of presuming conformity with such performance or functional requirements; or

(d) by referring to the specifications mentioned in paragraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in paragraph (b) for other characteristics.

(4) Where a contracting entity makes use of the option of referring to the specifications mentioned in subregulation (3)(a), it cannot reject a tender on the ground that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting entity, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications. An appropriate means might be constituted by a technical dossier from the manufacturer or a test report from a recognised body.

(5) Where a contracting entity uses the option provided for in subregulation (3) of laying down performance or functional requirements, it may not reject a tender for products, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down.

In his tender, the tenderer shall prove to the satisfaction of the contracting entity and by any appropriate means that the product, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

An appropriate means might be constituted by a technical dossier from the manufacturer or a test report from a recognised body.

(6) Where contracting entities lay down environmental characteristics in terms of performance or functional requirements as referred to in subregulation (3)(b) they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

Contracting entities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier from the manufacturer or a test report from a recognised body.

(7) "Recognised bodies", within the meaning of this regulation, are test and calibration laboratories, and certification and



inspection bodies which comply with applicable European standards. Contracting entities shall accept certificates from recognised bodies established in other Member States.

(8) Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to subregulations (3) and (4) is not possible; such reference shall be accompanied by the words "or equivalent".

Communication of technical specifications.

**35.** (1) Contracting entities shall make available on request to economic operators interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts covered by periodic indicative notices within the meaning of regulation 41(1).

(2) Where the technical specifications are based on documents available to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

Variants.

**36.** (1) Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities. Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation.

(2) In procedures for awarding supply or service contracts, contracting entities which have authorised variants pursuant to subregulation (1) may not reject a variant on the sole ground that it would, if successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Subcontracting.

**37.** In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract he intends to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the principal economic operator's liability.

Conditions for performance of contracts.

**38.** Contracting entities may lay down special conditions relating to the performance of a contract, provided that these are

compatible with Community law and are indicated in the notice used as a means of calling for competition or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

**39.** (1) A contracting entity may state in the contract documents the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to protection provisions and to the working conditions which are in force in Malta and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

Obligations relating to taxes, environmental protection, employment protection provisions and working conditions.

(2) A contracting entity which supplies the information referred to in subregulation (1) shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force. The provisions of subregulation (1) shall be without prejudice to the application of regulation 57.

## CHAPTER V

### Procedures

**40.** (1) When awarding supply, works or service contracts, contracting entities shall apply the procedures adjusted for the purposes of these regulations.

Use of open, restricted and negotiated procedures.

(2) Contracting entities may choose any of the procedures described in regulation 1, in the definition of "open, restricted and negotiated procedures", provided that, subject to subregulation (3), a call for competition has been made in accordance with regulation 42.

(3) Contracting entities may use a procedure without prior call for competition in the following cases:

(a) when no tenders or no suitable tenders or no applications have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of contract are not substantially altered;

(b) where a contract is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;

(c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be executed only by a particular economic operator;

(d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open procedures, restricted procedures and negotiated procedures with a prior call for competition cannot be adhered to;

(e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

(f) for additional works or services which were not included in the project initially awarded or in the contract first concluded but have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the contractor or service provider executing the original contract:

- when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities, or

- when such additional works or services, although separable from the performance of the original contract, are strictly necessary to its later stages;

(g) in the case of works contracts, for new works consisting in the repetition of similar works assigned to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition; as soon as the first project is put up for tender, notice shall be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of regulations 16 and 17;

(h) for supplies quoted and purchased on a commodity market;

(i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in regulation 14(2) is fulfilled;

(j) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;

(k) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under the laws of Malta;

(l) when the service contract concerned is part of the follow-up to a design contest organised in accordance with the provisions of these regulations and shall, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest; in the latter case, all the winners shall be invited to participate in the negotiations.

## **CHAPTER VI**

### **Rules on publication and transparency**

#### **Section 1**

#### **Publication of notices**

**41.** (1) Contracting entities shall make known, at least once a year, by means of a periodic indicative notice as referred to in Schedule XV, published by the Commission or by themselves or by the Department of Contracts on their "buyer profile", as described in point 2(b) of Schedule XXII:

Periodic  
indicative  
notices and  
notices on the  
existence of a  
system of  
qualification.

(a) where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following twelve months, where the total estimated value, taking into account the provisions of regulations 16 and 17, is equal to or greater than Lm300,000. The product area shall be established by the contracting entities by reference to the CPV nomenclature;

(b) where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Schedule XVIII which they intend to award over the following twelve months, where such estimated total value, taking into account the provisions of regulations 16 and 17, is equal to or greater than Lm300,000;

(c) where works are concerned, the essential characteristics of the works contracts or the framework agreements which they intend to award over the following twelve months, whose estimated value is equal to or greater than the threshold specified in regulation 16, taking into account the provisions of regulation 17.

The notices referred to in paragraphs (a) and (b) shall be sent to the Commission and the Director or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in paragraph (c) shall be sent to the Commission and the Director or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting entities intend to award.

Contracting entities which publish a periodic indicative notice on their buyer profiles shall transmit to the Commission and the Director, electronically, a notice of the publication of the periodic indicative notice on a buyer profile, in accordance with the format and procedures for the electronic transmission of notices indicated in point 3 of Schedule XXII.

The publication of the notices referred to in paragraphs (a), (b) and (c) shall be compulsory only where the contracting entities take the option of reducing the time limits for the receipt of tenders as laid down in regulation 45(4).

This paragraph shall not apply to procedures without prior call for competition.

(2) Contracting entities may, in particular, publish or arrange for the Commission and the Director to publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly pointed out that these notices are additional ones.

(3) Where contracting entities choose to set up a qualification system in accordance with regulation 53, the system shall be the

subject of a notice as referred to in Schedule XIV, indicating the purpose of the qualification system and how to have access to the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

**42.** (1) In the case of supply, works or service contracts, the call for competition may be made:

Notices used as a means of calling for competition.

(a) by means of a periodic indicative notice as referred to in Schedule XV; or

(b) by means of a notice on the existence of a qualification system as referred to in Schedule XIV; or

(c) by means of a contract notice as referred to in Schedule XIII, Sections A, B or C.

(2) In the case of dynamic purchasing systems, the system's call for competition shall be by contract notice as referred to in subregulation 1(c), whereas calls for competition for contracts based on such systems shall be by simplified contract notice as referred to in Schedule XIII, Section D.

(3) When a call for competition is made by means of a periodic indicative notice, the notice shall:

(a) refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;

(b) indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested economic operators to express their interest in writing; and

(c) have been published in accordance with Schedule XXII not more than twelve months prior to the date on which the invitation referred to in regulation 47(5) is sent. Moreover, the contracting entity shall meet the time limits laid down in regulation 45.

**43.** (1) Contracting entities which have awarded a contract or a framework agreement shall, within two months of the award of the contract or framework agreement, send a contract award notice as referred to in Schedule XVII.

Contract award notices.

In the case of contracts awarded under a framework agreement within the meaning of regulation 14(2), the contracting entities shall

not be bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting entities shall send a contract award notice based on a dynamic purchasing system within two months after the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within two months of the end of each quarter.

(2) The information provided in accordance with Schedule XVII and intended for publication shall be published in accordance with Schedule XXII. In this connection, the Commission and the Director shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of tenders received, the identity of economic operators, or prices.

(3) Where contracting entities award a research-and-development service contract ("R & D contract") by way of a procedure without a call for competition in accordance with regulation 40(3)(b), they may limit to the reference "research and development services" the information to be provided in accordance with Schedule XVII concerning the nature and quantity of the services provided.

Where contracting entities award an R & D contract which cannot be awarded by way of a procedure without a call for competition in accordance with regulation 40(3)(b), they may, on grounds of commercial confidentiality, limit the information to be provided in accordance with Schedule XVII concerning the nature and quantity of the services supplied.

In such cases, contracting entities shall ensure that any information published under this paragraph is no less detailed than that contained in the notice of the call for competition published in accordance with regulation 42(1).

If they use a qualification system, contracting entities shall ensure in such cases that such information is no less detailed than the category referred to in the list of qualified service providers drawn up in accordance with regulation 53(7).

(4) In the case of contracts awarded for services listed in Schedule XIX, the contracting entities shall indicate in the notice whether they agree to publication.

(5) Information provided in accordance with Schedule XVII and marked as not being intended for publication shall be published only in simplified form and in accordance with Schedule XXII for statistical purposes.

**44.** (1) Notices shall include the information mentioned in Schedules XIII, XIV, XV, XVI and XVII and, where appropriate, any other information deemed useful by the contracting entity in the format of standard forms adopted by the Commission.

Form and  
manner of  
publication of  
notices.

(2) Notices sent by contracting entities to the Commission and the Director shall be sent either by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Schedule XXII, or by other means.

The notices referred to in regulations 41, 42 and 43 shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Schedule XXII.

(3) Notices drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Schedule XXII, shall be published no later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Schedule XXII shall be published not later than twelve days after they are transmitted. However, in exceptional cases, the contract notices referred to in regulation 42(1)(c) shall be published within five days in response to a request by the contracting entity, provided that the notice has been sent by fax.

(4) Contract notices shall be published in full in an official language of the Community as chosen by the contracting entity, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages. The costs of publication of notices by the Commission shall be borne by the Community.

(5) Notices and their contents may not be published at national level before the date on which they are sent to the Commission. Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of regulation 41(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile. Periodic indicative notices may not be published on a buyer profile



before the dispatch to the Commission of the notice of their publication in that form; they shall mention the date of that dispatch.

(6) Contracting entities shall ensure that they are able to supply proof of the dates on which notices are dispatched.

(7) The Commission shall give the contracting entity confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

(8) Contracting entities may publish in accordance with subregulations (1) to (7) contract notices which are not subject to the publication requirements laid down in these regulations.

## **Section 2**

### **Time limits**

Time limits for the receipt of requests to participate and for the receipt of tenders.

**45.** (1) When fixing the time limits for requests to participate and the receipt of tenders, contracting entities shall take particular account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this regulation.

(2) In the case of open procedures, the minimum time limit for the receipt of tenders shall be fifty-two days from the date on which the contract notice was sent.

(3) In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

(a) the time limit for the receipt of requests to participate, in response to a notice published under regulation 42(1)(c), or in response to an invitation by the contracting entities under regulation 47(5), shall, as a general rule, be fixed at no less than thirty-seven days from the date on which the notice or invitation was sent and may in no case be less than twenty-two days if the notice is sent for publication by means other than electronic means or fax, and at no less than fifteen days if the notice is transmitted by such means;

(b) the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders;

(c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least twenty-four days and shall in no case be less than ten days from the date of the invitation to tender.

(4) If the contracting entities have published a periodic indicative notice as referred to in regulation 41(1) in accordance with Schedule XXII, the minimum time limit for the receipt of tenders in open procedures shall, as a general rule, not be less than thirty-six days, but shall in no case be less than twenty-two days from the date on which the notice was sent. These reduced time limits are permitted, provided that the periodic indicative notice has included, in addition to the information required by Schedule XV, Part I, all the information required by Schedule XV, Part II, insofar as the latter information is available at the time the notice is published, and that the notice has been sent for publication between fifty-two days and twelve months before the date on which the contract notice referred to in regulation 42(1)(c) is sent.

(5) Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Schedule XXII the time limits for the receipt of requests to participate in restricted and negotiated procedures, and for receipt of tenders in open procedures, may be reduced by seven days.

(6) Except in the case of a time limit set by mutual agreement in accordance with subregulation (3)(b), time limits for the receipt of tenders in open, restricted and negotiated procedures may be further reduced by five days where the contracting entity offers unrestricted and full direct access to the contract documents and any supplementary documents by electronic means from the date on which the notice used as a means of calling for competition is published, in accordance with Schedule XXII. The notice should specify the internet address at which this documentation is accessible.

(7) In open procedures, the cumulative effect of the reductions provided for in subregulations (4), (5) and (6) may in no case result in a time limit for the receipt of tenders of less than fifteen days from the date on which the contract notice is sent:

Provided that, if the contract notice is not transmitted by fax or electronic means, the cumulative effect of the reductions provided for in subregulations (4), (5) and (6) may in no case result in a time limit for receipt of tenders in an open procedure of less than twenty-two days from the date on which the contract notice is transmitted.

(8) (a) The cumulative effect of the reductions provided for in subregulations (4), (5) and (6) may in no case result in a time limit for receipt of requests to participate, in response to a notice published under regulation 42(1)(c), or in response to an invitation by the contracting entities under regulation 47(5), of less than fifteen days from the date on which the contract notice or invitation is sent.

(b) In restricted and negotiated procedures, the cumulative effect of the reductions provided for in subregulations (4), (5) and (6) may in no case, except that of a time limit set by mutual agreement in accordance with subregulation (3)(b), result in a time limit for the receipt of tenders of less than ten days from the date of the invitation to tender.

(9) If, for whatever reason, the contract documents and the supporting documents or additional information, although requested in good time, have not been supplied within the time limits set in regulations 46 and 47, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended accordingly, except in the case of a time limit set by mutual agreement in accordance with subregulation (3)(b), so that all economic operators concerned may be aware of all the information needed for the preparation of a tender.

(10) A summary table of the time limits laid down in this regulation is given in Schedule XXIV.

Open procedures: specifications, additional documents and information.

**46.** In open procedures, where contracting entities do not offer unrestricted and full direct access by electronic means in accordance with regulation 45(6) to the specifications and any supporting documents, the specifications and supporting documents shall be sent to economic operators within six days of receipt of the request, provided that the request was made in good time before the time limit for the submission of tenders:

Provided that it has been requested in good time, additional information relating to the specifications shall be supplied by the contracting entities or competent departments not later than six days before the time limit fixed for the receipt of tenders.

Invitations to submit a tender or to negotiate.

**47. (1)** In restricted procedures and negotiated procedures, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate. The invitation to the candidates shall include either:

- a copy of the specifications and any supporting documents, or

- a reference to accessing the specifications and the supporting documents indicated in the first indent, when they are made directly available by electronic means in accordance with regulation 45(6).

(2) Where the specifications and, or any supporting documents are held by an entity other than the contracting entity responsible for the award procedure, the invitation shall state the address from which those specifications and documents may be requested and, if appropriate, the closing date for requesting such documents, the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator immediately upon receipt of the request.

(3) The additional information on the specifications or the supporting documents shall be sent by the contracting entity or the competent department not less than six days before the final date fixed for the receipt of tenders, provided that it is requested in good time.

(4) In addition, the invitation shall include at least the following:

(a) where appropriate, the time limit for requesting additional documents, as well as the amount and terms of payment of any sum to be paid for such documents;

(b) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;

(c) a reference to any published contract notice;

(d) an indication of any documents to be attached;

(e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;

(f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

(5) When a call for competition is made by means of a periodic indicative notice, contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection

of tenderers or participants in negotiations. This invitation shall include at least the following information:

(a) nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;

(b) type of procedure: restricted or negotiated;

(c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

(d) the address and closing date for the submission of requests for tender documents and the language or languages in which they are to be drawn up;

(e) the address of the entity which is to award the contract and the information necessary for obtaining the specifications and other documents;

(f) economic and technical conditions, financial guarantees and information required from economic operators;

(g) the amount and payment procedures for any sum payable for obtaining tender documents;

(h) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and

(i) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

### **Section 3**

#### **Communication and information**

Rules applicable  
to  
communication.

**48.** (1) All communication and information exchange referred to in this Title may be carried out by post, by fax, by electronic means in accordance with subregulations (4) and (5), by telephone in the cases and circumstances referred to in subregulation (6), or by a combination of those means, according to the choice of

the contracting entity.

(2) The means of communication chosen shall be generally available and thus not restrict economic operators' access to the tendering procedure.

(3) Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting entities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

(4) The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

(5) The following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:

(a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Schedule XXVI;

(b) contracting entities may, in compliance with Article 5 of Directive 1999/93/EC, require that electronic tenders be accompanied by an advanced electronic signature in conformity with paragraph 1 thereof;

(c) Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;

(d) tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for the submission of tenders or requests to participate, the documents, certificates and declarations mentioned in regulations 52(2), 52(3), 53 and 54 if they do not exist in electronic format.

(6) The following rules shall apply to the transmission of requests to participate:

(a) requests to participate in procedures for the award of contracts may be made in writing or by telephone;

(b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;

(c) contracting entities may require that requests for participation made by fax should be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by post or electronic means, should be stated by the contracting entity in the notice used as a means of calling for competition or in the invitation referred to in regulation 47(5).

Information to applicants for qualification, candidates and tenderers.

**49.** (1) Contracting entities shall as soon as possible inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement, the award of the contract, or admission to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure, or not to implement a dynamic purchasing system; this information shall be provided in writing if the contracting entities are requested to do so.

(2) On request from the party concerned, contracting entities shall, as soon as possible, inform:

- any unsuccessful candidate of the reasons for the rejection of his application,

- any unsuccessful tenderer of the reasons for the rejection of his tender, including, for the cases referred to in regulation 34(4) and (5), the reasons for their decision of non-equivalence or their decision that the works, supplies or services do not meet the performance or functional requirements,

- any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement.

The time taken to do so may under no circumstances exceed fifteen days from receipt of the written enquiry.

However, contracting entities may decide that certain information on the contract award or the conclusion of the framework

agreement or on admission to a dynamic purchasing system, referred to in subregulation (1), is to be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, public or private, including the interests of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

(3) Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of six months. If the decision will take longer than four months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

(4) Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible and under no circumstances more than fifteen days later than the date of the decision. The reasons shall be based on the criteria for qualification referred to in regulation 53(2).

(5) Contracting entities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in regulation 53(2). Any intention to bring qualification to an end shall be notified in writing to the economic operator beforehand, at least fifteen days before the date on which qualification is due to end, together with the reason or reasons justifying the proposed action.

**50.** (1) Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

Information to be stored concerning awards.

(a) the qualification and selection of economic operators and the award of contracts;

(b) the use of procedures without a prior call for competition by virtue of regulation 40(3);

(c) the non-application of Chapters III to VI of this Title by virtue of the derogations provided for in Chapter II of Title I and in Chapter II of this Title.

Contracting entities shall take appropriate steps to document the progress of award procedures conducted by electronic



means.

(2) The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission or the Director if a request for such is made.

## CHAPTER VII

### Conduct of the procedure

General provisions.

**51.** (1) For the purpose of selecting participants in their award procedures:

(a) contracting entities having provided rules and criteria for the exclusion of tenderers or candidates in accordance with regulation 54(1), (2) or (4) shall exclude economic operators which comply with such rules and meet such criteria;

(b) they shall select tenderers and candidates in accordance with the objective rules and criteria laid down pursuant to regulation 54;

(c) in restricted procedures and in negotiated procedures with a call for competition, they shall where appropriate reduce in accordance with regulation 54 the number of candidates selected pursuant to paragraphs (a) and (b).

(2) When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in award procedures for the specific contracts which are the subject of the call for competition, contracting entities shall:

(a) qualify economic operators in accordance with the provisions of regulation 53;

(b) apply to such qualified economic operators those provisions of paragraph 1 that are relevant to restricted or negotiated procedures.

(3) Contracting entities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in regulations 55 and 57.

## Section 1

### Qualification and qualitative selection

**52.** (1) When selecting participants for a restricted or negotiated procedure, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence.

(a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;

(b) require tests or evidence which would duplicate objective evidence already available.

(2) Where they request the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

(3) For works and service contracts, and only in appropriate cases, the contracting entities may require, in order to verify the economic operator's technical abilities, an indication of the environmental management measures which the economic operator will be able to apply when carrying out the contract. In such cases, should the contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the EMAS or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification.

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

**53.** (1) Contracting entities which so wish may establish and operate a system of qualification of economic operators. Contracting entities which establish or operate a system of

Qualification systems.

qualification shall ensure that economic operators are at all times able to request qualification.

(2) The system under subregulation (1) may involve different qualification stages. It shall be operated on the basis of objective criteria and rules for qualification to be established by the contracting entity. Where those criteria and rules include technical specifications, the provisions of regulation 34 shall apply. The criteria and rules may be updated as required.

(3) The criteria and rules for qualification referred to in subregulation (2) may include the exclusion criteria listed in regulation 45 on the terms and conditions set out therein. Where the contracting entity is a contracting authority within the meaning of regulation 2(1)(a), those criteria and rules shall include the exclusion criteria listed in regulation 45(4).

(4) Where the criteria and rules for qualification referred to in subregulation (2) include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. Under the same conditions, a group of economic operators as referred to in regulation 11 may rely on the capacity of participants in the group or of other entities.

(5) Where the criteria and rules for qualification referred to in subregulation (2) include requirements relating to the technical and, or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators referred to in regulation 11 may rely on the abilities of participants in the group or of other entities.

(6) The criteria and rules for qualification referred to in subregulation (2) shall be made available to economic operators on request. The updating of these criteria and rules shall be

communicated to interested economic operators.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to interested economic operators the names of such other entities or bodies.

(7) A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

(8) When establishing or operating a qualification system, contracting entities shall in particular observe the provisions of regulation 41(3) concerning notices on the existence of a system of qualification, of regulation 49(3), (4) and (5) concerning the information to be delivered to economic operators having applied for qualification, of regulation 51(2) concerning the selection of participants when a call for competition is made by means of a notice on the existence of a qualification system as well as the provisions of regulation 52 on mutual recognition concerning administrative, technical or financial conditions, certificates, tests and evidence.

(9) When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

**54.** (1) Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to interested economic operators.

Criteria for qualitative selection.

(2) Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective rules and criteria which they have established and which are available to interested economic operators.

(3) In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

(4) The criteria set out in subregulations (1) and (2) may include the exclusion criteria listed in regulation 45 of the Public Contracts Regulations, 2005 under the terms and conditions set out

therein.

Where the contracting entity is a contracting authority within the meaning of regulation 2(1)(a), the criteria and rules referred to in subregulations (1) and (2) shall include the exclusion criteria listed in regulation 45(4).

(5) Where the criteria referred to in subregulations (1) and (2) include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that the necessary resources will be available to it, for example by delivering an undertaking by those entities to that effect. Under the same conditions, a group of economic operators as referred to in regulation 11 may rely on the capacities of participants in the group or of other entities.

(6) Where the criteria referred to in subregulations (1) and (2) include requirements relating to the technical and, or professional abilities of the economic operator, the latter may where necessary and for a particular contract rely on the abilities of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting entity that for the performance of the contract those resources will be available to it, for example by delivering an undertaking by those entities to make the necessary resources available to the economic operator.

Under the same conditions, a group of economic operators as referred to in regulation 11 may rely on the abilities of participants in the group or of other entities.

## **Section 2**

### **Award of the contract**

Contract award  
criteria.

**55.** (1) Without prejudice to any laws prevailing in Malta on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall:

(a) where the contract is awarded on the basis of the most economically advantageous tender from the point of view of the contracting entity, be various criteria linked to the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental

characteristics, technical merit, after-sales service and technical assistance, commitments with regard to parts, security of supply, and price or otherwise,

(b) the lowest price only.

(2) Without prejudice to the provisions of subregulation (3), in the case referred to in subregulation (1)(a), the contracting entity shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread. Where, in the opinion of the contracting entity, weighting is not possible for demonstrable reasons, the contracting entity shall indicate the criteria in descending order of importance.

(3) The relative weighting or order of importance shall be specified, as appropriate, in the notice used as a means of calling for competition, in the invitation to confirm the interest referred to in regulation 47(5), in the invitation to tender or to negotiate, or in the specifications.

**56.** (1) Contracting entities may use electronic auctions.

Use of  
electronic  
auctions.

(2) (a) In open, restricted or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the contract specifications can be established with precision. In the same circumstances, an electronic auction may be held on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in regulation 15.

(b) The electronic auction shall be based:

(i) either solely on prices when the contract is awarded to the lowest price,

(ii) or on prices and, or on the new values of the features of the tenders indicated in the specification, when the contract is awarded to the most economically advantageous tender.

(3) Contracting entities which decide to hold an electronic auction shall state that fact in the notice used as a means of calling for competition. The specifications shall include, *inter alia*, the following details:

(a) the features whose values will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;

(c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(d) the relevant information concerning the electronic auction process;

(e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

(4) Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and, or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

(5) (a) When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in regulation 55(2).

(b) The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and, or new values submitted. That formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous

tender, as indicated in the notice used as a means of calling for competition or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

(c) Where variants are authorised, a separate formula shall be provided for each variant.

(6) Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

(7) Contracting entities shall close an electronic auction in one or more of the following manners:

(a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting entities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;

(c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting entities have decided to close an electronic auction in accordance with paragraph (c), possibly in combination with the arrangements laid down in paragraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(8) After closing an electronic auction, the contracting entities shall award the contract in accordance with regulation 55 on the basis of the results of the electronic auction.

(9) Contracting entities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as defined in the notice used as a means of calling for



competition and in the specification.

Abnormally low tenders.

**57.** (1) If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant. Those details may relate in particular to:

(a) the economics of the manufacturing process, of the services provided and of the construction method;

(b) the technical solutions chosen and, or any exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;

(c) the originality of the supplies, services or work proposed by the tenderer;

(d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;

(e) the possibility of the tenderer obtaining State aid.

(2) The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

(3) Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was granted legally. Where the contracting entity rejects a tender in these circumstances, it shall inform the Commission and the Director of that fact.

### **Section 3**

#### **Tenders comprising products originating in third countries and relations with those countries**

Tenders comprising products originating in third countries.

**58.** (1) This regulation shall apply to tenders covering products originating in third countries with which the Community has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be

without prejudice to the obligations of the Community or of Malta with respect of third countries.

(2) Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, exceeds fifty per cent of the total value of the products constituting the tender. For the purposes of this regulation, software used in telecommunications network equipment shall be regarded as products.

(3) (a) Subject to paragraph (b), where two or more tenders are equivalent in the light of the contract award criteria defined in regulation 55, preference shall be given to those tenders which may not be rejected pursuant to subregulation (2). The prices of those tenders shall be considered equivalent for the purposes of this regulation, if the price difference does not exceed three per cent.

(b) However, a tender shall not be preferred to another pursuant to paragraph (a) where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

(4) For the purposes of this regulation, those third countries to which the benefit of the provisions of this regulation has been extended by a Council Decision in accordance with subregulation (1) shall not be taken into account for determining the proportion, referred to in subregulation (2), of products originating in third countries.

**59.** (1) The Director shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by undertakings in securing the award of service contracts in third countries.

Relations with third countries as regards works, supplies and service contracts.

(2) The Director shall inform the Commission of any difficulties, in law or in fact, encountered and reported by undertakings and which are due to the non-observance of the international labour law provisions listed in Schedule XXV when such undertakings have tried to secure the award of contracts in third countries.

(3) This regulation shall be without prejudice to the commitments of the Community in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

### TITLE III

#### RULES GOVERNING SERVICE DESIGN CONTESTS

General provision.

**60.** (1) The rules for the organisation of a design contest shall be in conformity with subregulation (2) and with regulations 61 and 63 to 66 and shall be made available to those interested in participating in the contest.

(2) The admission of participants to design contests shall not be limited:

(a) by reference to the territory or part of the territory of Malta;

(b) on the ground that, under the laws of Malta, they would have been required to be either natural or legal persons.

Thresholds.

**61.** (1) This Title shall apply to design contests organised as part of a procurement procedure for services whose estimated value, net of VAT, is equal to or greater than Lm195,000. For the purposes of this subregulation, "threshold" means the estimated value net of VAT of the service contract, including any possible prizes and, or payments to participants.

(2) This Title shall apply to all design contests where the total amount of contest prizes and payments to participants is equal to or greater than Lm195,000. For the purposes of this subregulation, "threshold" means the total amount of the prizes and payments, including the estimated value net of VAT of the service contract which might subsequently be concluded under regulation 40(3) if the contracting entity does not exclude such an award in the contest notice.

Design contests excluded.

**62.** This Title shall not apply to:

(a) contests which are organised in the same cases as referred to in regulations 20, 21 and 22 for service contracts;

(b) design contests organised for the pursuit, in Malta, of an activity to which the applicability of regulation 30(1) has been established by a Commission decision or has been deemed applicable pursuant to regulation 30(4)(b) or (c), or (5)(c).

**63.** (1) (a) Contracting entities which wish to organise a design contest shall call for competition by means of a contest notice. Contracting entities which have held a design contest shall make the results known by means of a notice. The call for competition shall contain the information referred to Schedule XX and the notice of the results of a design contest shall contain the information referred to in Schedule XXI in accordance with the format of standard forms adopted by the Commission.

Rules on advertising and transparency.

(b) The notice of the results of a design contest shall be forwarded to the Commission and the Director within two months of the closure of the design contest and under conditions to be laid down by the Commission. In this connection, the Commission and the Director shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information, concerning the number of projects or plans received, the identity of the economic operators and the prices tendered.

(2) Regulation 44(2) to (8) shall also apply to notices relating to design contests.

**64.** (1) Regulation 48(1), (2) and (4) shall apply to all communications relating to contests.

Means of communication.

(2) Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time limit for their submission.

(3) The following rules shall apply to the devices for the electronic receipt of plans and projects:

(a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Schedule XXVI;

(b) voluntary accreditation schemes aiming at enhanced levels of certification service provision for such devices may be introduced.

Rules on the organisation of design contests, the selection of participants and the panel.

**65.** (1) When organising design contests, contracting entities shall apply procedures which are adapted to the provisions of these regulations.

(2) Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

(3) The panel shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the panel members shall have the same qualification or an equivalent qualification.

Decisions of the panel.

**66.** (1) The panel shall be autonomous in its decisions or opinions.

(2) It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

(4) Anonymity must be observed until the panel has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions which the panel has recorded in the minutes to clarify any aspects of the projects.

(6) Complete minutes shall be drawn up of the dialogue between panel members and candidates.

#### **TITLE IV**

#### **STATISTICAL OBLIGATIONS**

Statistical obligations.

**67.** (1) The Director shall send to the Commission every year a statistical report concerning the total value, broken down by Member State and by category of activity to which Schedules I to X refer, of the contracts awarded below the thresholds set out in regulation 16 but which would be covered by these regulations were it not for those thresholds.

(2) As regards the categories of activity to which Schedules II, III, V, IX and X refer, the Director shall send to the Commission a statistical report on contracts awarded no later than 31 October of each year, in accordance with arrangements to be laid down by the Commission. The statistical report shall contain the information required to verify the proper application of the Agreement. The information required under subregulation (1) shall not include information concerning contracts for the R & D services listed in category 8 of Schedule XVIII, for telecommunications services listed in category 5 of Schedule XVIII whose CPV positions are equivalent to the CPC reference numbers 7524, 7525 and 7526, or for the services listed in Schedule XIX.

(3) The arrangements under subregulations (1) and (2) shall be laid down in such a way as to ensure that:

(a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardised;

(b) the confidential nature of the information provided is respected.

## TITLE V

### APPLICATION OF PUBLIC CONTRACTS REGULATIONS

**68.** Regulations 4, 5, 6, 7, 8, 9, 10, 11, 13, 33 and Parts VII, VIII, IX, X, XI, XII, XIII and XIV of the Public Contracts Regulations, 2005 shall, *mutatis mutandis*, apply to these regulations.

Application of  
Public Contracts  
Regulations,  
2005.

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**SCHEDULE I**

CONTRACTING ENTITIES IN THE SECTORS OF TRANSPORT OR  
DISTRIBUTION OF GAS OR HEAT

None

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**SCHEDULE II**

CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION,  
TRANSPORT OR DISTRIBUTION OF ELECTRICITY

1. Enemalta Corporation
- 

**SCHEDULE III**

CONTRACTING ENTITIES IN THE SECTORS OF PRODUCTION,  
TRANSPORT OR DISTRIBUTION OF DRINKING WATER

1. Water Services Corporation
  2. Water Desalination Services
- 

**SCHEDULE IV**

CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES

None

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**SCHEDULE V**

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY,  
TRAMWAY, TROLLEYBUS OR BUS SERVICES

None

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**SCHEDULE VI**

CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR

1. Maltapost plc.

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**SCHEDULE VII**

CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION FOR  
AND EXTRACTION OF OIL OR GAS

1. Oil Exploration Division at the Ministry for Resources and Infrastructure

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**SCHEDULE VIII**

CONTRACTING ENTITIES IN THE SECTORS OF EXPLORATION FOR  
AND EXTRACTION OF COAL AND OTHER SOLID FUELS

None

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**SCHEDULE IX**

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND  
PORT OR OTHER TERMINAL FACILITIES

None

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**SCHEDULE X**

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT INSTALLATIONS

None

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**SCHEDULE XI**

**LIST OF COMMUNITY LEGISLATION REFERRED TO  
IN REGULATION 30(3)**

**A. TRANSPORT OR DISTRIBUTION OF GAS OR HEAT**

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas.<sup>(1)</sup>

**B. PRODUCTION, TRANSMISSION OR DISTRIBUTION OF  
ELECTRICITY**

Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity.<sup>(2)</sup>

**C. PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING  
WATER**

-

**D. CONTRACTING ENTITIES IN THE FIELD OF RAIL SERVICES**

-

**E. CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY,  
TRAMWAY, TROLLEYBUS OR MOTOR BUS SERVICES**

-

**F. CONTRACTING ENTITIES IN THE FIELD OF POSTAL SERVICES**

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service.<sup>(3)</sup>

**G. EXPLORATION FOR AND EXTRACTION OF OIL OR GAS**

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons.<sup>(4)</sup>

**H. EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER  
SOLID FUELS**

-

I. CONTRACTING ENTITIES IN THE FIELD OF SEAPORT OR  
INLAND PORT OR OTHER TERMINAL EQUIPMENT

-

J. CONTRACTING ENTITIES IN THE FIELD OF AIRPORT  
INSTALLATIONS

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(1) OJ L 204, 21.7.1998, p. 1.

(2) OJ L 27, 30.1.1997, p. 20.

(3) OJ L 15, 21.1.1998, p. 14. Directive last amended by Directive 2002/39/EC (OJ L 176, 5.7.2002, p. 21).

(4) OJ L 164, 30.6.1994, p. 3.

**SCHEDULE XII****LIST OF ACTIVITIES AS SET OUT IN THE DEFINITION  
OF "WORKS CONTRACTS" IN REGULATION 1<sup>(1)</sup>**

NACE <sup>(2)</sup>					
SECTION F			CONSTRUCTION		CPV CODE
DIVISION	GROUP	CLASS	SUBJECT	NOTES	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: - demolition of buildings and other structures - clearing of building sites - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. - site preparation for mining: overburden removal and other development and preparation of mineral properties and sites This class also includes: - building site drainage - drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	This class includes: - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes This class excludes: - drilling of production oil or gas wells, see 11.20 - water well drilling, see 45.25 - shaft sinking, see 45.25 - oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

NACE <sup>(2)</sup>					
SECTION F			CONSTRUCTION		CPV CODE
DIVISION	GROUP	CLASS	SUBJECT	NOTES	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <p>construction of all types of buildings</p> <p>construction of civil engineering constructions</p> <p>bridges, including those for elevated highways, viaducts, tunnels and subways long-distance pipelines, communication and power lines</p> <p>urban pipelines, urban communication and power lines;</p> <p>ancillary urban works</p> <p>assembly and erection of prefabricated constructions on the site</p> <p>This class excludes:</p> <p>service activities incidental to oil and gas extraction, see 11.20</p> <p>erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28</p> <p>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23</p> <p>building installation, see 45.3</p> <p>building completion, see 45.4</p> <p>architectural and engineering activities, see 74.20</p> <p>project management for construction, see 74.20</p>	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <p>erection of roofs</p> <p>roof covering</p> <p>waterproofing</p>	45220000

NACE <sup>(2)</sup>					
SECTION F			CONSTRUCTION		CPV CODE
DIVISION	GROUP	CLASS	SUBJECT	NOTES	
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>construction of highways, streets, roads, other vehicular and pedestrian ways</li> <li>construction of railways</li> <li>construction of airfield runways</li> <li>construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations</li> <li>painting of markings on road surfaces and car parks</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>preliminary earth moving, see 45.11</li> </ul>	45230000
		45.24	Construction of water projects	<p>This class includes construction of:</p> <ul style="list-style-type: none"> <li>waterways, harbour and river works, pleasure ports (marinas), locks, etc.</li> <li>dams and dykes dredging</li> <li>subsurface work</li> </ul>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment:</li> <li>construction of foundations, including pile driving</li> <li>water well drilling and construction, shaft sinking</li> <li>erection of non-self-manufactured steel elements</li> <li>steel bending</li> <li>bricklaying and stone setting</li> <li>scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms</li> <li>erection of chimneys and industrial ovens</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	45250000

NACE <sup>(2)</sup>					
SECTION F			CONSTRUCTION		CPV CODE
DIVISION	GROUP	CLASS	SUBJECT	NOTES	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: electrical wiring and fittings telecommunications systems electrical heating systems residential antennas and aerials fire alarms burglar alarm systems lifts and escalators lightning conductors, etc.	45310000
		45.32	Insulation work activities	This class includes: installation in buildings or other construction projects of thermal, sound or vibration insulation  This class excludes: waterproofing, see 45.22	45320000
		45.33	Plumbing	This class includes: installation in buildings or other construction projects of: plumbing and sanitary equipment gas fittings  heating, ventilation, refrigeration or air-conditioning equipment and ducts  sprinkler systems  This class excludes: installation of electrical heating systems, see 45.31	45330000
		45.34	Other building installation	This class includes: installation of illumination and signalling systems for roads, railways, airports and harbours  installation in buildings or other construction projects of fittings and fixtures n.e.c.	45340000
	45.4		Building completion		45400000

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NACE <sup>(2)</sup>					
SECTION F			CONSTRUCTION		CPV CODE
DIVISION	GROUP	CLASS	SUBJECT	NOTES	
		45.41	Plastering	This class includes: application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials	45410000
		45.42	Joinery installation	This class includes: installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials  interior completion such as ceilings, wooden wall coverings, movable partitions, etc.  This class excludes: laying of parquet and other wood floor coverings, see 45.43	45420000
		45.43	Floor and wall covering	This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles  parquet and other wood floor coverings, carpets and linoleum floor coverings, including of rubber or plastic  terrazzo, marble, granite or slate floor or wall coverings  wallpaper	45430000
		45.44	Painting and glazing	This class includes: interior and exterior painting of buildings, painting of civil engineering structures installation of glass, mirrors, etc  This class excludes: installation of windows, see 45.42	45440000

NACE <sup>(2)</sup>					
SECTION F			CONSTRUCTION		CPV CODE
DIVISION	GROUP	CLASS	SUBJECT	NOTES	
		45.45	Other building completion	<p>This class includes:</p> <p>installation of private swimming pools, steam cleaning, sand blasting and similar activities for building exteriors</p> <p>other building completion and finishing work n.e.c</p> <p>This class excludes:</p> <p>interior cleaning of buildings and other structures, see 74.70</p>	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <p>renting of construction or demolition machinery and equipment without operators, see 71.32</p>	45500000

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(1) Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p.1), Regulation as last amended by Commission Regulation (EEC) No 761/93 (OJ L 83, 3.4.1993, p.1).

(2) In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.



### **SCHEDULE XIII**

#### **INFORMATION TO BE INCLUDED IN CONTRACT NOTICES**

##### **A. OPEN PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.

2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

3. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system).

Category of service within the meaning of Schedule XVIII or XIX and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.

5. For supplies and works:

(a) Nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));

(b) Indication of whether the suppliers may tender for some and, or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

(c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

(a) The nature and quantity of the goods to be supplied, including

any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference of the law, regulation or administrative provision;

(d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

7. Where known, indication of whether authorisation to submit variants exists or not.

8. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.

9. (a) Address from which the contract documents and additional documents may be requested.

(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.

10. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;

(b) Address to which they should be sent;

(c) Language or languages in which they should be drawn up.

11. (a) Where applicable, the persons authorised to be present at the opening of tenders;

(b) Date, time and place of such opening.

12. Where applicable, any deposits and guarantees required.

13. Main terms concerning financing and payment and, or references to the provisions in which these are contained.

14. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

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15. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.

16. Period during which the tenderer is bound to keep open his tender.

17. Where appropriate, particular conditions to which performance of the contract is subject.

18. Criteria referred to in regulation 55 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications.

19. Where appropriate, the reference to publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.

21. Date of dispatch of the notice by the contracting entity.

22. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

23. Any other relevant information.

## B. RESTRICTED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.

2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Schedule XVIII or XIX and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.

5. For supplies and works:

(a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));

(b) Indication of whether the suppliers may tender for some and/or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

(c) Information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

(a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) Reference to the law, regulation or administrative provision;

(d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

7. Where known, indication of whether authorisation to submit variants exists or not.

8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

- 10. (a) Final date for receipt of requests to participate;
- (b) Address to which they should be sent;
- (c) Language or languages in which they should be drawn up.

11. Final date for dispatch of invitations to tender.

12. Where applicable, any deposits and guarantees required.

13. Main terms concerning financing and payment and, or references to the provisions in which these are contained.

14. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.

15. Criteria referred to in regulation 55 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender.

16. Where appropriate, particular conditions to which performance of the contract is subject.

17. Where appropriate, the reference to publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

18. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

19. Date of dispatch of the notice by the contracting entities.

20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

21. Any other relevant information.

#### C. NEGOTIATED PROCEDURES

1. Name, address, telegraphic address, electronic address, telephone

number, telex and fax number of the contracting entity.

2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

3. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Schedule XVIII or XIX and description (nomenclature reference No(s)).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.

4. Place of delivery, site or place of performance of service.

5. For supplies and works:

(a) The nature and quantity of the goods to be supplied (nomenclature reference No(s)), including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work (nomenclature reference No(s));

(b) Indication of whether the suppliers may tender for some and, or all the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

(c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

6. For services:

(a) The nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising these options as well as the number of renewals, if any. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

(b) Indication of whether the performance of the service is reserved

by law, regulation or administrative provision to a particular profession;

(c) Reference of the law, regulation or administrative provision;

(d) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the performance of the service;

(e) Indication of whether service providers may tender for a part of the services concerned.

7. Where known, indication of whether authorisation to submit variants exists or not.

8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

9. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

10. (a) Final date for receipt of requests to participate;

(b) Address to which they should be sent;

(c) Language or languages in which they should be drawn up.

11. Where appropriate, any deposits and guarantees required.

12. Main terms concerning financing and payment and/or references to the provisions in which these are contained.

13. Information concerning the economic operator's position and the minimum economic and technical conditions required of him.

14. Criteria referred to in regulation 55 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to negotiate.

15. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.

16. Where applicable, date(s) of previous publications in the Official Journal of the European Union.

17. Where appropriate, particular conditions to which performance of the

contract is subject.

18. Where appropriate, the reference to publication in the Official Journal of the European Union of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.

19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

20. Date of dispatch of the notice by the contracting entity.

21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

22. Any other relevant information.

**D. SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM<sup>(1)</sup>**

1. Country of contracting entity.

2. Name and e-mail address of contracting entity.

3. Publication reference of the contract notice on the dynamic purchasing system.

4. E-mail address at which the contract documents and additional documents relating to the dynamic purchasing system are available.

5. Subject-matter of contract: description by reference number(s) of CPV nomenclature and quantity or extent of the contract to be awarded.

6. Timeframe for submitting indicative tenders.

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<sup>(1)</sup> With a view to admission to the system in order to be able subsequently to participate in the invitation to tender for the specific contract.



## **SCHEDULE XIV**

### **INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity.
  2. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
  3. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system - nomenclature reference No(s)).
  4. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
  5. Period of validity of the qualification system and the formalities for its renewal.
  6. Reference to the fact that the notice acts as the call for competition.
  7. Address where further information and documentation concerning the qualification system can be obtained (if different from the addresses mentioned under 1).
  8. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
  9. Where known, criteria referred to in regulation 55 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria, shall be mentioned where they do not appear in the specifications or will not be indicated in the invitation to tender or to negotiate.
  10. Any other relevant information.
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## **SCHEDULE XV**

### **INFORMATION TO BE INCLUDED IN THE PERIODIC INDICATIVE NOTICE**

#### **I. HEADINGS TO BE COMPLETED IN ALL CASES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.

2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied (nomenclature reference No(s)).

(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (nomenclature reference No(s)).

(c) For service contracts: intended total procurement in each of the service categories listed in Schedule XVIII (nomenclature reference No(s)).

3. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile.

4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

5. Any other relevant information.

#### **II. INFORMATION WHICH SHOULD BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS THE REDUCTION OF THE TIME LIMITS FOR THE RECEIPT OF TENDERS**

6. A reference to the fact that interested suppliers should advise the entity of their interest in the contract or contracts.

7. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

8. Time limit for the receipt of applications for an invitation to tender or to negotiate.

9. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Schedule XVIII and description, stating if framework agreement(s) are envisaged, including any options for further procurement and the estimated time available for exercising these options as well

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as the number of renewals, if any. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.

10. State whether purchase, lease, rental or hire-purchase or any combination of these is involved.

11. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

12. Address to which interested undertakings should send their expressions of interest in writing.

Time limit for receipt of expressions of interest.

Language or languages authorised for the presentation of candidatures or tenders.

13. Economic and technical conditions, and financial and technical guarantees required of suppliers.

14. (a) Estimated date for initiating the award procedures in respect of the contract or contracts (if known);

(b) Type of award procedure (restricted or negotiated);

(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.

15. Where appropriate, particular conditions to which performance of the contract is subject.

16. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

17. Where known, criteria referred to in regulation 55 to be used for award of the contract: "lowest price" or "most economically advantageous tender". Criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of these criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in regulation 47(5) or in the invitation tender or to negotiate.

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**SCHEDULE XVI**

**INFORMATION TO BE INCLUDED IN NOTICES OF PUBLICATION OF A  
PERIODIC INDICATIVE NOTICE ON A BUYER PROFILE NOT USED AS A  
MEANS OF CALLING FOR COMPETITION**

1. Country of the contracting entity.
  2. Name of the contracting entity.
  3. Internet address of the "buyer profile" (URL).
  4. CPV Nomenclature reference No(s).
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## SCHEDULE XVII

### INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE

#### I. Information for publication in the Official Journal of the European Union<sup>(1)</sup>

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services and Nomenclature reference No(s); where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature and quantity of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);  
(b) Reference of publication of the notice in the Official Journal of the European Union;  
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of regulation 40(3) or regulation 32.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to regulation 40(3)(j).
9. Name and address of the economic operator(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
12. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
13. Optional information:

- value and share of the contract which has been or may be subcontracted to third parties,

- award criteria.

II. Information not intended for publication

14. Number of contracts awarded (where an award has been split between several suppliers).

15. Value of each contract awarded.

16. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).

17. Which award criteria were used (most economically advantageous; lowest price)?

18. Was the contract awarded to a tenderer who submitted a variant, in accordance with regulation 36(1)?

19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with regulation 57?

20. Date of transmission of the notice by the contracting entity.

21. In the case of contracts for services listed in Schedule XIX, agreement by the contracting entity to publication of the notice (regulation 43(4)).

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(1) Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

**SCHEDULE XVIII <sup>(1)</sup>****SERVICES WITHIN THE MEANING OF REGULATION 31**

Category No	Subject	CPC Reference No <sup>(1)</sup>	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services <sup>(2)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land <sup>(2)</sup> and by air	71235, 7321	60122200-1, 60122230-0 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72530000-9 to 72532000-3
6	Financial services: (a) Insurances services (b) Banking and investment services <sup>(3)</sup>	ex 81, 812, 814	From 66100000-1 to 66430000-3 and From 67110000-1 to 67262000-1 <sup>(3)</sup>
7	Computer and related services	84	From 50300000-8 to 50324200-4, From 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	Research and development services <sup>(4)</sup>	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0, and 74423100-1, 74423110-4

Category No	Subject	CPC Reference No <sup>(1)</sup>	CPV Reference No
11	Management consulting services <sup>(5)</sup> and related services	865, 866	From 73200000-4 to 73220000-0, From 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8, and From 74310000-5 to 74323100-0, and 74874000-6
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and From 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6, and 50190000-3, 50229000-6, 50243000-0

- (1) In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply
- (1) CPC Nomenclature (provisional version), used to define the scope of Directive 93/38/EEC.
- (2) Except for rail transport services covered by category 18.
- (3) Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. Also excluded:
- services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon;
- nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to these regulations.
- (4) Except research and development services 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.
- (5) Except arbitration and conciliation services.



**SCHEDULE XIX****SERVICES WITHIN THE MEANING OF REGULATION 32**

Category No	Subject	CPC Reference No <sup>(1)</sup>	CPV Reference No
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9, and From 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9, and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9, and From 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, From 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7), and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services <sup>(1)</sup>	872	From 74500000-4 to 74540000-6 (except 74511000-4), and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5, and From 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services		

(1) Except employment contracts.

## SCHEDULE XX

### INFORMATION TO BE INCLUDED IN THE DESIGN CONTEST NOTICE

1. Name, address, electronic address, telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
2. Project description (nomenclature reference No(s)).
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of projects.
5. In the case of restricted contests:
  - (a) the number of participants envisaged, or range;
  - (b) where applicable, names of participants already selected;
  - (c) criteria for the selection of participants;
  - (d) final date for receipt of requests to participate.
6. Where applicable, indication of whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of the selected members of the panel.
9. Indication of whether the decision of the panel is binding on the authority.
10. Where applicable, number and value of prizes.
11. Where applicable, details of payments to all participants.
12. Indication of whether the prize-winners are permitted any follow-up contracts.
13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.
14. Date of dispatch of the notice.

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15. Date of receipt of the notice by the Office for Official Publications of the European Communities.

16. Any other relevant information

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## **SCHEDULE XXI**

### **INFORMATION TO BE INCLUDED IN THE RESULTS OF DESIGN CONTEST NOTICES**

1. Name, address, telegraphic address and telephone, telex and fax numbers of the contracting authority.

2. Project description (nomenclature reference No(s)).

3. Total number of participants.

4. Number of foreign participants.

5. Winner(s) of the contest.

6. Where applicable, the prize(s).

7. Other information.

8. Reference of the design contest notice.

9. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

10. Date of dispatch of the notice.

11. Date of receipt of the notice by the Office for Official Publications of the European Communities.

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## SCHEDULE XXII

### FEATURES CONCERNING PUBLICATION

#### 1. Publication of notices

(a) Notices referred to in regulations 41, 42, 43 and 63 must be sent by the contracting entities to the Office for Official Publications of the European Communities in the format required by Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of public contract notices)<sup>(1)</sup>. The periodic indicative notices referred to in regulation 41(1), published on a buyer profile as described in paragraph 2(b), must also use that format, as must the notice of such publication;

(b) Notices referred to in regulations 41, 42, 43 and 63 must be published by the Office for Official Publications of the European Communities or by the contracting entities in the event of a periodic indicative notice published on a buyer profile in accordance with regulation 41(1).

In addition, contracting authorities may publish this information on the internet on a "buyer profile" as referred to in paragraph 2(b);

(c) The Office for Official Publications of the European Communities will give the contracting authority the confirmation referred to in regulation 44(7).

#### 2. Publication of complementary or additional information

(a) Contracting entities are encouraged to publish the specifications and the additional documents in their entirety on the internet;

(b) The buyer profile may include periodic indicative notices as referred to in regulation 41(1), information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

#### 3. Format and procedures for the electronic transmission of notices

The format and procedure for sending notices electronically are accessible at the internet address "<http://simap.eu.int>".

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(1) OJ L 285, 29.10.2001, p.1 and OJ L 214, 9.8.2002, p. 1.

## **SCHEDULE XXIII**

### DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of these regulations,

1. (a) "Technical specification", in the case of service or supply contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;

(b) "Technical specification", in the case of works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting entity is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

2. "Standard" means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

- "international standard": a standard adopted by an international standards organisation and made available to the general public;

- "European standard": a standard adopted by a European standards organisation and made available to the general public;

- "national standard": a standard adopted by a national standards organisation and made available to the general public;

3. "European technical approval" means a favourable technical assessment of the fitness for use of a product, based on the fulfilment of the essential

requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;

4. "Common technical specifications" means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the Official Journal of the European Union;

5. "Technical reference": any product produced by European standardisation bodies, other than official standards, according to procedures adapted to developments in market needs.

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**SCHEDULE XXIV**

## Summary Table of the Time Limits laid down in regulation 45

## Open procedures

Time limit for receipt of tenders - without a periodic indicative notice					
Time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
52	45	47	40	none	none

With publication of a periodic indicative notice					
A: Time limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
36	29	31	24	none	none
B: Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 7	Effect on second subparagraph of paragraph 7
22	15	17	10	The period of 10 days is extended to 15 days	The period of 17 days is extended to 22 days

## Restricted and negotiated procedures

Time limit for the receipt of requests to participate:					
General time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
37	30	Not applicable (n.a.)	n.a.	none	n.a.
Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
22	15	n.a.	n.a.	none	n.a.

Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
15	8	n.a.	n.a.	The period of 8 days is extended to 15 days	n.a.

## Time limit for the receipt of tenders

A: Time limit in general	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
24	n.a.	19	n.a.	n.a.	none
B: Minimum time limit	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
10	n.a.	5	n.a.	n.a.	The period of 5 days is extended to 10 days
C: Time limit set by agreement	Electronic transmission of the notice	Contract documents available electronically	Electronic transmission plus 'electronic' contract documents	Effect on first subparagraph of paragraph 8	Effect on second subparagraph of paragraph 8
n.a.	n.a.	n.a.	n.a.	n.a.	n.a.



**SCHEDULE XXV**

INTERNATIONAL LABOUR LAW PROVISIONS WITHIN  
THE MEANING OF REGULATION 59(3)

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;
  - Convention 98 on the Right to Organise and Collective Bargaining;
  - Convention 29 on Forced Labour;
  - Convention 105 on the Abolition of Forced Labour;
  - Convention 138 on Minimum Age;
  - Convention 111 on Discrimination (Employment and Occupation);
  - Convention 100 on Equal Remuneration;
  - Convention 182 on Worst Forms of Child Labour.
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## SCHEDULE XXVI

### REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF TENDERS, REQUESTS TO PARTICIPATE, APPLICATIONS FOR QUALIFICATION AS WELL AS PLANS AND PROJECTS IN CONTESTS

Devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that:

(a) electronic signatures relating to tenders, requests to participate and applications for qualification as well as to the forwarding of plans and projects comply with national provisions adopted pursuant to Directive 1999/93/EC<sup>(1)</sup>;

(b) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as the submission of plans and projects can be determined precisely;

(c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;

(d) if that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;

(e) only authorised persons may set or change the dates for opening data received;

(f) during the various stages of the qualification procedure, the contract award procedure or contest, access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;

(g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;

(h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.

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(1) Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).