

Select version 144b: Icelandic law September 15,

2015

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Legal code. Icelandic law on September 15, 2015. Version 144b. Printed in [two columns](#) .

Law on public procurement

2007 No. 84 March 30

Passage through the Parliament. Bill.

Entered into force on 17 April 2007 unless the 2nd and 3rd sentence. Paragraph 2. Article 19. which entered into force on 1 January 2008. *The EEA Agreement: XVI. Annex Directive 2004/18 / EC. Edited by [L. 56/2011](#) (entered into force on 1 June 2011), [L. 126/2011](#) (entered into force on 30 Sept. 2011), [L. 58/2013](#) (entered into force on April 12, 2013, unless Article 18. That took effect Sept. 1. 2013; *EEA Agreement: XVI. I of Directive 89/665 / EEC and 92/13 / EC*) [L. 65/2014](#) (entered into force on June 6, 2014; *EEA Agreement: XVI. I of Directive 2009/81 / EC*).*

Section 1. General provisions.

Chapter. Purpose, definitions and scope.

■ **Article 1.** *The purpose of the Act.*

The purpose of this Act is to ensure equal treatment of companies, public procurement, promote efficiency in the public sector through effective competition and promote innovation and development of the public procurement of goods, works and services.

■ **Article 2.** *Definitions.*

For the purposes of this Act is as follows:

1. *Public telecommunications:* telecommunications authorities have specifically assigned to one or more telecommunications entities.

2. *Public communications:* A public telecommunications infrastructure which enables the transfer of signals between defined network termination points by wire, microwave, optical means or by other electromagnetic means.

3. *Public offering:* Shopping procedure in which any economic operator may submit a tender.

4. *Bidder:* A company that has submitted a bid in the auction, such as open or restricted procedures, negotiated or competitive dialogue.

5. *Telecommunication Services:* Services that partially or fully involves the direct signals on the public telecommunications network by means of telecommunications processes the radio or television.

6. *Businesses:* Synonym, used for the sake of simplicity, the contractor, vendor products and provider of services.

7. *Dynamic purchasing system:* completely electronic process for making commonly used purchases as possible to make the private market so that the buyer's requirements are met, provided that the process temporarily, during the call, open to all companies that meet the

conditions for participation in the system, who have indicative tender in accordance with its terms.

8. *A design*: A process that allows the buyer to obtain or program design, particularly in the field of town and country planning, architecture and engineering or data processing, as selected by a jury after a competition that has been carried out with or without prizes.

9. *Closed auctions*: Procurement process where only those companies that have been chosen by the buyer may submit a tender but any organization can apply to join.

10. *Central purchasing*: Public body under. Article 3. acquiring goods and / or services for other buyers or make contracts or framework agreements for works, supplies or services intended for other buyers.

11. *Network termination point*: all physical connections and their technical access to those who are part of the public telecommunications network and are necessary for access and effective communications on the network.

12. *Public entity or purchaser*: State, local governments, their agencies and organizations and other public entities under. Article 3.

13. *Public contracts*: All contracts covered by paragraph 1. Article 4.

14. *Electronic means*: The use of electronic equipment for the processing (including digital compression) and data that are transmitted, is transmitted and received by wire, radio, optical means or other electromagnetic means.

15. *The electronic auction*: repetitive process where new, lower price, and / or new values concerning certain elements of tenders are presented electronically, after the buyer has taken full evaluation of the beginning, so that can be measured using automatic methods.

16. *Framework*: A contract one or more buyers undertake to make one or more companies in order to establish the terms of contracts to be awarded during a given period, in particular with regard to price and quantity envisaged, if applicable.

17. *Written or in writing*: Any expression consisting of words or figures that can be read, reproduced and media, including information transmitted and stored by electronic means.

18. *Common Procurement Vocabulary (CPV)*: the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No. 2195/2002 as well as compliance with other applicable file was secured. In the event of varying interpretations of the scope of this Act because of differences between the CPV and NACE nomenclatures listed. Annex I of the Directive, or between the CPV and CPC nomenclatures listed. II. Annex of the Directive, the NACE file and CPC-file priority.

19 *Competitive dialogue*: Procurement process that any company can apply to participate and whereby the contracting authority conducts a dialogue with companies that have been chosen to participate in the process, all with the aim of developing one or more options capable of meeting its requirements, provided that these requirements serve as a basis when applicants are invited to submit tenders.

20. *Negotiated*: a contracting authority to the company that he has chosen according to a predetermined process and negotiates the terms of contract with one or more companies.

21. *Works concession*: contract in which the consideration for the works consists either solely in the right to exploit the work or the right to exploit the work together with payment from the buyer.

22 *concession service*: A service as compensation for services consists either solely in the right to exploit the work or the right to exercise together with payment from the buyer.

23 *standard*: a standard approved by a recognized standards organization and can be applied repeatedly and regularly without the obligation to abide by it. Standard is a public document and intended for general use.

24. *The Directive*: European Parliament and Council Directive 2004/18 / EC on the coordination of procedures for the award of public works contracts, public supply contracts

and public service from March 31, 2004, as it was incorporated into the EEA Agreement by EEA Joint Committee No. 68/2006, published September 7, 2006 in the Official Journal of the European Union no. 44/2006.

25 *Construction contracts or public works contracts*: All contracts covered by paragraph 2. Article 4.

26. *The contractor, vendor and service provider*: natural or legal person, including public bodies, or group of individuals and / or entities on the market the execution of works, goods and / or services.

27. *Supply contracts or public supply contracts*: All contracts covered by paragraph 3. Article 4.

28. *Participant*: Businesses seeking to take part in a restricted or negotiated procedure or competitive dialogue.

29 *Service contracts or public service contracts*: All contracts covered by paragraph 4. Article 4.

30 *Mini-tendering*: Procurement process where a buyer seeks, with reasonable notice, written last among certain framework agreement the terms of which have not been laid down in the framework agreement, and which generally have a contract to the tenderer which has submitted the best tender on the basis of the award criteria in advance in the tender framework agreement.

■ **Article 3.** *Public bodies covered by the Act.*

This Act applies to state, local governments, their agencies and other public entities, subject. Paragraph 2. The act also applies to organizations as these parties, one or more of such authorities.

A person is considered official if he can carry the rights and obligations of law and in particular has been established, in order to serve the public interest, provided it does not operations that may be for private activities, such as in trade or industry. In addition, should any of the following apply to it:

a. Its operations are mostly funded by the state or local governments, their agencies or other public entities. Load of the party is mostly driven at the expense of the state or local governments, their institutions or other public if public funding exceeds 50% of annual operating costs.

b. It is supervised by the state or local governments, their agencies or other public entities.

c. He is subject to a separate board that state or local governments, their agencies or other public entities appoint a majority.

The public entities listed in Appendix 1 of the EEA Joint Committee No. 68/2006, published September 7, 2006 in the EEA Supplement to the Official Journal no. 44/2006, shall be considered public bodies within the meaning of this article.

■ **Article 4.** *Contracts covered by the Act.*

This Act applies to written agreements on financial compensation as one or more buyers under. Article 3. make one or more companies and the object of the work is, the sale of goods or services within the meaning of the Act.

Work contracts are agreements whose object implementation, or implementation and design of the works on the one hand out in Annex I of the Directive on the other hand works, or the execution of works, by whatever means, corresponding to the requirements of the contracting authority . Pain in this sense means the outcome of building or civil engineering works that can, as such, serve an economic or technical function.

Supply contracts are contracts other than those in paragraph 2. which have as their object the purchase, rental or lease, with or without an option to buy the products. A contract that includes occasional siting and installation shall be considered a supply contract.

Service contracts are contracts other than works or supply contracts having as their object

the provision of services specified in Annex II. Annex of the Directive. If the contract covers both the purchase of goods and services within the meaning II. Annex Directive shall be considered a service contract if the factor that relates to services exceeding product component. Agreement that aims provision of services within the meaning II. Annex of the Directive and includes occasional work within the meaning of Annex I of the Directive, the principal object of the contract shall be considered a service contract.

■ **Article 5.** *Contracts defense.*

□[Subject to the provisions of Article 9. the provisions of Article XIV. and XV. section on procurement of defense and security within the scope of Directive 2009/81 / EC of 13 July 2009 on the coordination of procedures for the award of the contracting authority or agreement of certain works contracts, supply contracts and service contracts in the fields of defense and security cf.. EEA Joint Committee No. 129/2013. Otherwise Act does not cover such purchases.

□The Minister shall issue regulations ¹⁾ provide for the procurement of defense and security within the scope of Directive 2009/81 / EC, in accordance with Iceland's obligations in the field of public procurement under the Agreement on the European Economic Area and other international agreements. The regulation should also provide in detail for legal recourse for such procurement.] ²⁾

¹⁾[Reg. 845/2014](#) . ²⁾[Act No. 65/2014, Article 1.](#)

■ **Article 6.** *Contracts that are specifically excluded from the scope of the law.*

□The Act does not apply to service contracts:

a. Purchase or rental, by whatever financial means, of land, existing buildings have been built or other immovable property or rights to them. Contracts for financial services concluded, before or after the contract of acquisition or lease of real property covered by the scope of the Act.

b. Acquisition, development and production of programs for radio and television contracts for broadcasting time.

c. Arbitration and conciliation.

d. Financial services in connection with the issue, sale, purchase or transfer of securities or other financial data and central bank services.

e. Labor contract.

f. Research and development services, with the exception of contracts where buyers bear the entire cost of the service and have the sole right to benefit from the results of its operations.

□The Minister may by regulation decide to government agencies and state their purchases in accordance with this Act in the preparation of the agreements referred to in paragraph 1.

■ **Article 7.** *Entities in the water, energy, transport and postal services.*

□The law does not apply to contracts that are exempt from Directive no. 2004/17 / EC on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services, see. 3.-7. Article. of the latter, as it has been incorporated into the Agreement on the European Economic Area., EEA Joint Committee No. 68/2006, published September 7, 2006 in the EEA Supplement to the Official Journal no. 44/2006, cf. Paragraph 2. Article 5., Article 19., Article 26. and Article 30. that Directive.

□Article XIV. and XV. of this Act shall apply to the contracts they make buyers that operate one or more of the activities referred to in Articles 3 to 7. Article. that Directive referred to in paragraph 1. and awarded for their business activities. Otherwise take the law does not cover purchases of these parties.

□The Minister shall issue regulations ¹⁾ provide for the procurement of the parties mentioned in [2. paragraph.] ²⁾ in accordance with Iceland's obligations in the field of public procurement under the Agreement on the European Economic Area and other international agreements.

¹R. 755/2007, cf. 916/2008, 614/2012 and 582/2014. ²Reg. 672/2012. ³Act No. 56/2011, Article 1.

■ **Article 8.** *Agreements in the telecommunications sector.*

□ The law does not apply to contracts which have the primary objective of establishing or operating a public telecommunications network or the public one or more telecommunications services.

■ **Article 9.** *Secret contracts and contracts requiring special security measures.*

□ The law does not apply to contracts which are declared secret or special security measures will be applied to their implementation in accordance with applicable laws and administrative regulations or the fundamental interests of the State require.

■ **Article 10.** *Contracts awarded on the basis of international agreements.*

□ The law does not apply to contracts governed by different rules on public procurement, on the basis of an intergovernmental agreement between the Icelandic state to one or more third countries, or a member of EFTA, the purchase of goods or works for the joint implementation or exploitation of States or acquisition services intended for the joint implementation or exploitation of a project by the states, provided that such an agreement is announced to the Authority.

□ The law does not apply to contracts on the basis of an international treaty on the stationing of troops and concerning the undertakings established in the Community or in other countries.

□ The law does not apply to contracts awarded under the regulations of international organizations for procurement.

■ **Article 11.** *Service concessions.*

□ With the exception of Article 14. Act does not apply to service concessions. However, the Minister may by regulation to regulate the type of service concessions with regard to the state government.

■ **Article 12.** *Contracts concluded under civil law.*

□ The law does not apply to service contracts awarded to the person or company parties themselves are buyers or on the basis of exclusive rights given to them by law or government directives are in accordance with the rules of the EEA Agreement.

■ **Article 13.** *Funding by public entities.*

□ Follow the provisions of this Act to the conclusion that the equivalent of 6.242 million euros or more, excluding VAT, the operator pays more than 50% in the case of contracts for building works and other structures within the meaning of Annex I of the Directive and also when the contract includes construction work for a hospital, sports and recreation, schools and universities, and public administration.

□ In the case of service to the equivalent of 249,000 euros or more, excluding VAT, the operator pays more than 50% and the related contract covered by paragraph 1. shall also comply with the provisions of this Act.

□ The public body shall ensure compliance with this Act if the other party enters into an agreement that falls under paragraph 1 or 2. The same applies if a public body awarding the contract on behalf of such person or oversees the awarding of the contract.

II. Chapter. General rules.

■ **Article 14.** *Equality companies in awarding contracts.*

□ Take fairness and transparency in government procurement. It is forbidden to discriminate on grounds of nationality or for other similar reasons.

□ It is not considered discriminatory to require that the product is delivered, services provided or work carried out at a particular place, since such a stipulation is based on objective reasons.

■ **Article 15.** *Those who enjoy rights under the law.*

□ Right under the law are enjoyed by companies established in any of the countries of the European Economic Area or a member of EFTA. These companies should never have inferior rights, but companies from other countries. Entitlement under this Act also benefit companies from other countries to the extent that they have such rights on the basis of an international agreement to which Iceland has made.

□ The regulation may establish rules for the implementation of the WTO Agreement (WTO) Agreement on Government Procurement and other international agreements on public procurement which Iceland may become a party.

■ **Article 16.** *Non-discrimination provision of special or exclusive rights.*

□ If a party other than the purchaser within the meaning of this Act is granted special or exclusive rights to provide public services shall ensure the act that provides for the right, so that the relevant statute, administrative or regulatory agreement, the party respecting the rules of non-discrimination on the nationality of the agreements signed in connection with the operation of the service.

■ **Article 17.** *Confidentiality.*

□ The buyer is not authorized to reveal any information which companies have submitted confidential. Such information includes in particular technical and trade as well as those elements of the offer which must be kept confidential.

□ Paragraph 1. does not apply to other means of provisions of law, see. in particular those provisions which impose an obligation to make public announcement of the conclusion of the Agreement on the European Economic Area, see. 4th paragraph. Article 35. Directive, and inform candidates and tenderers of certain items, see. 41 and 71. Directive, as well as the obligation to provide the Public Procurement Complaints Commission information, see. Paragraph 5. Article 95.

□ Paragraph 1. does not affect the obligation of a public authority to provide information on Freedom of Information.

■ **Article 18.** *Contracts confined to specific groups.*

□ May restrict the right to participate in the tender to sheltered workshops or target agreement with its implementation is carried out according to plan for sheltered workshops where most of the employees are disabled so that they can not perform work on the regular labor market because of work reduction.

□ If shopping is over the threshold of the European Economic Area, see. Section 3, shall refer to Article 19. Directive in the contract notice.

■ **[18. Article. a.** *Shopping in other states of the European Economic Area.*

□ [The Minister] ¹⁾ may allow central purchasing the tender procurement covered by this Act, in other states of the European Economic Area, whether in collaboration with foreign buyers, organizations or their representatives, and / or central purchasing bodies or private. The authorization shall be provided for each auction separately following a reasoned request by the Agency. The authorization shall be granted only if the existence of the rules of the European Economic Area of procurement has been passed into law in the state and there is reason to believe that the purchase of the State will serve efficiency or effective competition and other legitimate considerations of public procurement. Procurements carried out on the basis of the authorization granted under this article, the rules of the state, including appeals, value procurement decisions and compensation. In its request for the procuring entity shall be for a special competition cycle. Upon receiving the request, the procuring entity [Ministry] ¹⁾ seeking confirmation Competition competition assessment purchasing. Competition confirmed non-competitive purchasing cycle go shopping not take place under this provision.] ²⁾

¹⁾Act No. 126/2011, Article 466.. ²⁾Act No. 56/2011, Article 2. This provision shall be reviewed within five years of entry into force of the Act under. Temporary Provision.

Section 2. Public procurement under the thresholds of the European Economic Area.

III. Chapter. Scope of this Section.

■ **Article 19.** Provisions of this section apply to procurement below the thresholds of the European Economic Area displayed in accordance with regulation. Article 78.

□ The provisions of this section shall not apply to procurement of local government, their institutions, other public entities on their behalf, as provided. Paragraph 2. Article 3., Or associations of these entities may have with them. These parties despite this always allowed to apply the rules of this section in all or part of their purchases. Municipalities should adopt rules on their purchase, provided they have not decided to buy into the rules of this section as a whole.

□ Provisions of this section shall not apply to concessions made under the European Economic thresholds published in accordance with Regulation. Article 78. However, the Minister may, in regulations to regulate the type of concession contracts under these thresholds may be fixed for them to be taken following a particular procurement process. The type of concession contracts above the thresholds EEA provisions of Article 80. and the rules referred to therein.

□ The implementation of design, the provisions of Article 37.

IV. Chapter. National thresholds.

■ **Article 20.** *Thresholds.*

□ [All purchases of goods over £ 11.5 million. and the purchase of services over 14.9 million kr. and works over 28 million kr. should tender or to comply with procurement procedures more fully set out in Chapter V.] ¹⁾

□ Amounts under. Paragraph 1. shall be adjusted every two years according to changes in the CPI for the first time on January 1 [2015]. ¹⁾ may be moving sums these up so that they meet next thousand. The Minister shall have appropriate notice, officially the changes to the thresholds under this article.

¹⁾[Act No. 58/2013, Article 1.](#)

■ **Article 21.** *Services that are excluded from tender procedures.*

□ Contracts for the purchase of services listed in Annex II. Annex B of the Directive is not obliged to tender or to comply with procurement procedures provided for in Chapter V of the Act. Procurement of these services should always be careful equality Article 14. as well as the provisions of Article 40. technical specifications.

□ Now contract the aim to provide services that are included in both II. Annex B of the Directive and II. Annex A of the Directive and is therefore obliged to comply with the provisions of this Act for the award and other procurement methods if that part of the contract covered II. Annex A of the Directive is more valuable than the part of the contract covered II. Annex B of the Directive. Otherwise there is only obliged to comply with the provisions of Article 40. technical specifications and equality Article 14.

□ The Minister may by regulation decide to government agencies and state enterprises are required to tender their shopping or make them comply with the procurement procedures provided for by Chapter V of the Act.

■ **Article 22.** *Procurement below the national threshold.*

□ Procurement under the thresholds advertised under. Article 20. the buyer shall at all times ensure efficiency and make comparisons among which most companies. Such comparisons must be made in writing or electronic process. These procurements shall respect the equality of Article 14. as well as the provisions of Article 40. technical specifications.

■ **Article 23.** *Calculating the value of contracts, framework agreements and dynamic purchasing systems.*

The calculation of the estimated value of the contract shall be based on the total amount the buyer will have to pay for purchases, excluding VAT. This calculation shall take into account the total amount, including any form of option and any renewals of the contract.

If the buyer expects to make an additional payment (bonus) or paid to candidates or tenderers shall be taken into account in the calculation of the estimated value of the contract.

The calculation should be based on the time the notice is sent for publication or when the buyer starting the procurement process in the circumstances it is not obliged to publicly announce the purchase.

May not be split up work or procurement of goods and / or services in order to procurement below the threshold.

■ **Article 24.** *Calculating the value of contracts.*

The calculation of the estimated value of works contracts shall be based on the cost of the works and the value of supplies bidder will provide the work.

■ **Article 25.** *Calculating the value of supply contracts.*

The calculation of the estimated value of a supply contract shall include the cost of transporting the supplies in the price. If a product is purchased "free on board" (FOB) in a foreign port shall not consider the transfer of the product price.

In the case of contracts for the lease, rental or hire purchase of products shall be calculated value as follows:

a. When a contract is temporary for 12 months or less, the total estimated value of the contract. When a contract is bound for a longer period shall be the total value including the products of the agreement.

b. When a contract is indefinite or uncertain negotiating time will be determined by the total payments under the contract for 48 months.

■ **Article 26.** *Calculating the value of service contracts.*

In the case of insurance services, the target value of the contract to the amount of contributions and other fees paid. In the banking and financial services should be based on the amount of fees, commissions and interest as well as other types of remuneration. In the case of contracts for the design should be based on the fees, commissions and other fees paid.

In the case of contracts which specify a total value shall be calculated in the following way:

a. When a contract for 48 months or less shall be based on the estimated contract duration of the contract.

b. When a contract is indefinite or uncertain negotiating time will be determined by the total payments under the contract for 48 months.

■ **Article 27.** *Shopping divided up.*

Since the procurement of works or services is divided into several separate contracts concluded at the same time, determined by the combined value of the contracts. The same applies when purchasing a product of the same type is divided into several separate contracts entered into simultaneously. If the combined value of the contracts exceeds the threshold should be considered as the value of each contract is also above the threshold.

When the total value of contracts referred to in paragraph 1. exceeds the threshold amount, notwithstanding the provisions of paragraph may make individual contracts without a tender for up to 20% of the aggregate value of the contract.

■ **Article 28.** *Calculating the value of persistent or renewable supply and service contracts.*

In the case of ongoing contracts or contracts renewed within a specified time shall calculate the estimated value of the following ways:

a. Either the actual aggregate cost of similar contracts from the previous fiscal year or 12 months, adjusted for changes in quantity and value over the next 12 months.

b. Or the estimated aggregate value during the 12 months, or a longer period if it comes to that, that the product or service is first made.

It is prohibited to use special methods of calculation in order to avoid tender procedures.

■ **Article 29.** *Estimate the value of framework agreements and dynamic purchasing systems.*

In the case of a framework agreement or dynamic purchasing system shall be based on the value of the total value of all contracts, excluding VAT, which is expected to do during the term of the framework agreement or dynamic purchasing system.

Section V. Procurement process.

■ **Article 30.** *The principle of open and restricted procedures.*

In all other cases than those mentioned in 31 33. Article. shall procurements above the threshold of 20. carried out in the open or closed tender according to specific rules VI. VII. VIII. and IX. chapter. Also may purchase based on framework agreements under. Article 34. and dynamic purchasing systems according to. Article 35. if the purchase exceeds the thresholds.

■ **Article 31.** *Competitive dialogue.*

In the case of particularly complex contracts and the buyer believes that the use of open or restricted procedure is to prevent the possibility that a contract may apply the provisions of this article. Of "particularly complex contract" within the meaning of this article is that when it is not possible to objectively identify the technical issues that can fulfill the needs or objectives, cf.. b, c and d of paragraph 3. Article 40., And / or the buyer can not specify a legal or financial structure of the project. A contract should only be taken on the basis of the award criterion for the most economically advantageous bid.

Buyer shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and / or the descriptive document.

Buyer has consultations with the participants, who have been selected to participate in accordance with Article VII. Chapter and Article 56., with a view to entering a constant manner in which their needs can best be met. In these negotiations may discuss all aspects of the contract with the chosen candidates.

During the dialogue, contracting authorities shall ensure equality of treatment among participants, especially participants are not discriminated against by providing information that some tenderers an advantage over others. The buyer is permitted to inform participants about solutions or other confidential information that another member has put forward, without their consent.

The buyer can decide the procedure to take place in successive stages in order to reduce the number of solutions are discussed. Such reduction solutions should be based on criteria for the award of which have been set out in the notice or the descriptive document. It should be stated in the notice or the descriptive data that recourse may be had to.

Buyer shall continue such dialogue until it can identify the solution or solutions that satisfy their needs, as appropriate, after comparing them, if necessary.

Having declared that the dialogue is concluded and informed the participants shall ask them to submit their final offers with regard to the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements necessary for the performance of the project. These tenders may be clarified, specified and fine-tuned at the request of the buyer. Such explanations, definitions and fine-tuning or additional information may not involve changes to the basic tender or the call for bidders to make offers, thus distorting competition or inequality.

Buyer be assessed on the basis of the award criteria set out in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with the provisions of Article 72. The buyer may request that the participant who

has been the most efficient bidding explain things in his tender or confirm certain obligations that have occurred, even if this does not lead to fundamental aspects of the offer, or the notice must be changed so that competition is distorted or inequality.

A contracting authority may specify prices or payments to the participants in the dialogue.

■ **Article 32.** *Negotiated procedure with the notice.*

If no legitimate bids in the open or restricted procedure or competitive dialogue, all deals are inaccessible or candidates or tenderers is dismissed on the basis of Article VII. section may carry out a negotiated procedure with the notice, provided that the original terms of the contract are not substantially altered. Although not required to publish the notice if all candidates or tenderers eligible VII. section and submitted bids in a previously announced tender are invited to participate in a negotiated procedure.

Negotiated after publication of a contract notice also in the following cases:

a. When it is impossible to estimate the total cost in advance the nature of the work, service or product or the risks associated with procurement making overall pricing.

b. In the case of services, especially in the field of intellectual property or research and development, to the extent that it is not possible to define the requirements for the purchased with sufficient precision to make it possible to discriminate between last accordance with the rules in open or restricted procedure.

c. In the case of works solely for purposes of research, testing or development and not for personal gain or to offset the cost of research and development.

In the case of negotiated based on 1 or 2. shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements in the notice, technical specifications and other contract documents, if they are involved, and choose the most economically advantageous tender in accordance with Article 72 . Article.

During the dialogue, contracting authorities shall ensure equality of treatment between the participants, especially participants are not discriminated against by providing information that some tenderers an advantage over others.

The buyer may provide for the procedure to take place in successive stages in order to reduce the number of participants. Such reduction shall be based on the criteria for the award of which have been set out in the notice or the specifications. It should be stated in the notice or the specifications that recourse may be had to.

■ **Article 33.** *Negotiated without prior contract notice.*

Negotiated without publication of a contract notice in the following cases, regardless of whether it is a work, product or service:

a. When no bids, no bids or no prior notice of participation received due to open or restricted procedure, provided that the contract are not substantially altered from the original terms.

b. When only one company comes for technical or artistic reasons, or for reasons connected with the protection of exclusive rights.

c. When shopping is strictly necessary for reasons of extreme urgency brought about by unforeseen events, making it impossible to meet deadlines in the open, restricted or negotiated under. Article 32. The conditions referred to justify extreme urgency must not in any circumstances be the responsibility of the buyer.

In the case of purchases of goods are negotiated without publication of a contract notice in the following cases:

a. In the case of the products are manufactured purely for the purpose of research, experimentation, study or development. This does not extend to quantity production to establish commercial viability or to recover research and development costs.

b. In the case of additional products that are intended either as a partial instead of normal supplies or equipment or an increase in the normal supplies or equipment and selection of a

new bidder would oblige the buyer to buy the materials had other technical characteristics and consistent ill older mechanical or attributed to an excessive technical difficulties in operation and maintenance. Such agreements, as well as recurrent contracts shall not normally exceed three years.

c. In the case of the products listed and purchased on the stock exchange.

d. In the case of products which are particularly advantageous terms, either from the vendor's business activities, or from the executor of the estate or a company is in administration or scheme of arrangement.

In the case of procurement of services are negotiated without publication of a tender notice permitted when the contract by design contest which provides for an obligation would be to negotiate with the candidates, one or more, who won the race. If several winners of the case is bound to invite all successful candidates to engage in dialogue.

In the case of procurement of works or services are negotiated without publication of a contract notice in the following cases:

a. In the case of additional work that was not expected of an agreed work and necessary, due to unforeseen circumstances, the same bidder, provided this is not possible to understand the work or service of an agreed work of technical and financial without great inconvenience to the buyer. The same applies if additional work is necessary in order to complete an agreed work or services. The aggregate value of contracts for additional work should not amount to more than half of the original contract.

b. In the new works or services consisting in the repetition of similar works or services and the same buyer has previously agreed with the company in a public or a private placement, provided that such works or services in accordance with the original plan the initial contract was awarded for. When the offer is made on the basis of the original program should be noted that this procedure might be adopted and shall take into account the estimated cost of these works or services when the threshold is calculated, see. IV. chapter. This procedure may be used only within three years of the original contract.

■ **Article 34.** *Framework agreements.*

Agreements shall be made in accordance with the procedures laid down in this Act. The parties to the Framework auction shall be based on the criteria for the award, see. Article 72. A framework agreement may provide that are not bound to replace only the party framework agreement on the procurement contract applies, provided that such deviations are specified in the tender documents.

We Contracts based on a framework agreement shall follow the provisions of paragraphs 3 and 4. Only allowed to make individual contracts under a framework agreement with the company that originally were members of a framework agreement. When awarding contracts based on a framework agreement may not make substantial amendments to the terms of a framework agreement, particularly in the case of framework agreements referred to in paragraph 4.

Duration of the framework agreement may not exceed four years except in exceptional cases duly justified, in particular by the subject of the framework agreement. The buyer may not misuse framework agreement or use it to prevent, restrict or distort competition.

If a framework agreement is concluded with one company should individual contracts under a framework agreement within the limits of the terms of the framework agreement. When awarding contracts, contracting authorities may consult in writing to the framework agreement and wish to supplement its tender if necessary.

If a framework agreement is concluded with more than one company framework agreement shall be at least three, provided that there is a sufficient number of economic issue that satisfy the selection criteria and / or tenders which meet the award criteria.

If the terms of the framework agreement are determined may make individual agreements

with the framework agreement in accordance with the provisions of the framework agreement. If the terms of the framework agreement are somewhat undecided should be conducted Mini-tendering the contract winner, as appropriate, to technical requirements have been clarified further, all in accordance with the following rules:

a. We made each individual contract, the buyer shall consult in writing the economic operators capable of performing the contract.

b. The buyer shall fix a time limit which is sufficiently long to the framework agreement can bid because the contract in question. In assessing the time limits shall take into account the complexity of the subject and the delivery time.

c. Tenders must be submitted in writing and their content shall remain confidential until the stipulated time has expired.

d. Buyer must choose between the last framework agreement on the basis of the award criteria stated in the specifications of the framework agreement.

■ **Article 35.** *Dynamic purchasing.*

Dynamic purchasing system shall only be set following a public tender in accordance with the rules applicable to such procedures. All bidders that met the requirements of Chapter. VII. section and having submitted an indicative tender that complies with the specification and any possible additional documents shall be entitled to membership of a dynamic purchasing system. Retouching can be tender at any time, provided it satisfies the specifications. When a dynamic purchasing system is established shall use solely electronic means in accordance with paragraphs 2 to 5. paragraph. Article 68.

When a dynamic purchasing system is established, contracting authorities shall:

a. Publish a contract notice stating that the interactive purchasing system is involved.

b. Specify, among other things, the nature of procurement under the scheme as well as the necessary information about the system, the electronic equipment used and the technical arrangements for connecting to the system and technical specifications in this regard.

c. Providing electronically unlimited, direct and full access to the specification and to any additional documents and publication of the notice up to and including the time when the system expires. Buyer shall notice the Internet address where you can access the data concerned.

During a dynamic purchasing system is, the buyer shall give all businesses an opportunity to set out tender and access to purchasing the conditions referred to in paragraph 1. The buyer should have taken a stand bidder within 15 days of the tender was submitted. May extend this period as long as no tender is received at the same time. Buyer shall notify the tenderer applying for membership of the procurement as soon as possible his participation in the system or the rejection of his.

Making each contract in a dynamic purchasing system should be carried out on the basis of the notification requested bids. Before making a final call for competition is published, contracting authorities shall publish a simplified contract notice inviting all interested companies are invited to submit a tender under. Paragraph 3. within a period which shall not be less than 15 days from the date. Buyer shall not proceed with tendering until they have completed evaluation of all tenders received by that deadline.

Buyer shall give all bidders who have received membership in dynamic purchasing the opportunity to bid for a particular contract to be awarded under the system. Buyer shall for this purpose specify a time limit for the submission of tenders. The buyer should be based on the award of the bid according to the criteria for the award of the contract set out in the contract notice of agency procurement system. These criteria can be defined in more detail in a separate tender notice for a particular contract.

A dynamic purchasing system may not exceed four years except in duly justified by objective reasons. The purchaser may not abuse interactive purchasing or using it to prevent,

restrict or distort competition. It is not permitted to demand a fee for applications for membership of purchasing or accession to it.

■ **Article 36.** *Contracts for the design and construction of social housing in the public sector.*

□ In the case of design and construction of social housing, where the scope, time and nature of the work makes it necessary that planning be based from the outset on close collaboration within a team made up of representatives of the government, experts and contractors may choose tenderer special award procedure has the aim of one who best fits into the team will be chosen.

□ Buyer shall present a piece of work in the contract notice as accurate as possible with a view to interested companies can make a realistic idea of the project. Furthermore, the buyer shall, in accordance with Article VII. section on the selection of bidders, setting out the personal, technical, economic and financial eligibility of participants.

■ **Article 37.** *Provision of design.*

□ The provisions of this Article shall apply to design contests where the total value of the prizes and / or other payments to participants is above the threshold for services under purchase. Article 20.

□ When organizing design contests as part of the purchase of services should take into account the total value of the contract, excluding VAT, in addition to the payments referred to in paragraph 1. When organizing design contests and the buyer has not renounced the right to a service agreement with purchases under. Paragraph 3. Article 33. On completion of design should also take into account the total value of potential service contract, excluding VAT, in addition to the payments referred to in paragraph 1. The design of the thresholds set out in regulations under. Article 78., Is under. Article 81. and the rules referred to therein.

□ May not restrict access to the design by reference to nationality or residence in a particular region or restrict access either natural or legal persons.

□ A buyer who intends to organize a design contest shall publish an ad about it. The notice or documents referred to in the notice shall contain information on the organization of the competition, selection criteria, if their number is limited, and the criteria for selecting a program or proposal. The notice and publication shall otherwise follow the rules of the tender notice and publication, as appropriate.

□ Inform the participants in the design contest of the results of the competition. If disclosure would impede law enforcement, be contrary to the public interest, prejudice the legitimate commercial interests of a particular enterprise, whether private or publicly owned, or could hinder competition between the service providers are not required to disclose information.

□ If you choose to limit the number of participants in the design of a certain number of the non-discrimination by setting out objective criteria for selecting participants. The number of participants should be sufficient to ensure genuine competition.

□ The jury shall be composed of individuals who are independent of participants in the competition. Where a particular professional qualification is required of participants at least a third of the jury members have the education or equivalent qualification.

□ The jury shall be autonomous in its decisions or opinions. It shall examine the plans and proposals, participants submitted only on the basis of the criteria indicated in the contest notice, see. 4th paragraph. Shall record that all jurors must sign, stating the assessment of each proposal together with any comments or items listed need clarification. May be given the opportunity to answer questions that the jury has recorded in the minutes to clarify any aspects of the proposal. Jury questions and responses should be included in the final minutes of the jury.

VI. Chapter. Tender documents.

■ **Article 38.** *General Terms and Conditions.*

Tender documents must contain all information necessary for the bidder to make an offer. The following items should be included in the tender documents as appropriate:

- a. Tender as provided for quantity and other relevant issues.
- b. The buyer's name and all the details of communication with the manager of the offering.
- c. Presentation of tenders.
- d. List of procurement documents.
- e. Time limits and location and time of tender opening.
- f. Delivery or execution.
- g. Period last.
- h. Payments, indexation and insurance, if applicable.
- i. Documents to prove financial and technical capacity of the bidder shall provide, or may be required to provide pursuant to. Articles 49 and 50.
- j. Handling of inquiries from potential bidders.
- k. Delivery Terms.
- l. In what language or languages tenders shall be submitted.
- m. Criteria for the award last.
- n. Whether it is permitted to tender for part of the proposed purchase.
- o. Whether variants are permissible and those who are the conditions for making them, including what are the minimum requirements that such deals must satisfy.
- p. The deadline buyer to accept the offer.

The Minister may by regulations prescribe further rules for the preparation and presentation of tender documents.

■ **Article 39.** *Tender form.*

Tender form should be included in tender documents and it shall be such that all bids are presented in the same way and thus comparable.

The Minister may by regulations prescribe further rules for the preparation and submission of tender forms.

■ **Article 40.** *Technical Specifications.*

Specifications as they are further defined in the first paragraph VI. Annex of the Directive should be included in the contract documents such as contract notices, contract documents or additional documents. Where practicable shall define these specifications in order to take into account accessibility criteria for disabled or should be designed for any user.

Technical specifications shall afford equal access for tenderers. They may not lead to subjective barriers to competition in government procurement.

To the extent otherwise specified prejudice to mandatory national rules, which are in accordance with Iceland's obligations under the EEA Agreement, shall provide technical specifications on any the following manner:

a. With technical specifications as defined in VI. Annex of the Directive as well as reference to any of the following in order of priority as follows:

1. national standards in the implementation of European standards,

2 ETA,

the third common technical specifications,

the fourth international standards,

5. other technical reference systems by the European standardization bodies have established.

If the above documents do not exist, referring to Icelandic standards, technical approvals Icelandic or Icelandic technical specifications related to the design, calculation and execution of works and use of the products. Each reference shall be accompanied by the words "or

equivalent" or similar wording.

b. In terms of performance or functional requirements, including requirements for environmental characteristics. Such criteria must be sufficiently detailed to enable tenderers to be aware of the contract and make possible buyer to make a bid.

c. In terms of performance or functional requirements, cf. b, however, that the specifications referred to in paragraph are used to check whether the requirements of this point are satisfied.

d. By referring to the specifications, see. A team of some features and by referring to the performance or functional requirements, see. b, on the other.

If the buyer exercises the authority to in paragraph 3. he can not reject a tender on the grounds that the product or service that is made available not comply with the technical specifications, provided the bidder forward, by whatever appropriate means, that the solutions he proposes satisfy in a manner comparable to the requirements seek to meet with relevant technical specifications. An appropriate means as defined above may include technical manufacturer or a test report from a recognized body.

If the purchaser exercises the authority of paragraph 3. to enter the fixed technical specifications describing a performance or functional requirements may not reject a tender in the works or services that are in line with national standards implementing European standards or in accordance with European technical approvals, common technical specifications, an international standard or other technical reference system the European standardization bodies have established, and the first of these specifications address the performance or requirements for use as a buyer has entered fixed. In its bid price offer to demonstrate it in an appropriate manner, so that the buyer deems it sufficient that the work, product or service that is in accordance with the standard meets the requirements of the buyer of the performance and utilization. An appropriate means as defined above may include technical manufacturer or a test report from a recognized body.

If the buyer requires environmental characteristics in terms of performance or functional requirements, see. b paragraph 3., he can use a special technical specifications, or parts of such specifications, as defined by European, international or national eco-labels or any other eco-label, provided that the following conditions are met:

a. Those specifications are appropriate to define the characteristics of a product or service that is the subject of the contract.

b. The requirements form the basis of eco based on scientific information.

c. The eco-labels are awarded based procedure in which all the stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organizations can participate in.

d. The eco-labels are accessible to all interested parties.

The buyer may decide on the assumption that the products and services eco-label meets the technical specifications laid down in the specifications. Contracting authorities must also take account of other evidence that these requirements are met, such as technical manufacturer or a test report from a recognized body.

By recognized organizations for the purposes of this Article, are test and calibration laboratories and certification and inspection bodies which comply with the European standards that we have. Buyer shall accept certificates from recognized organization in other states of the European Economic Area or a member of EFTA.

Technical specifications shall not refer to a particular type, manufacturer, special processing, trade marks, patents, type, origin or production with the result that thing certain companies are prepared better than others, or certain companies are excluded from participation in public procurement, as hallowed by such a reference does not specifically the subject of the contract. In exceptional cases, the reference shall be permitted in the

description of the agreement is not possible under. 3 and 4., Providing that such reference the words "or equivalent" or similar wording.

■ **Article 41.** *Variants.*

If the criterion for award on the basis of financial viability, but not limited to price, the buyer is entitled to allow tenderers to submit variants.

Buyer shall state in the notice whether variants are authorized, subject. o of paragraph 1. Article 38., But failing variants prohibited. Only variants that meet the minimum requirements of the buyer in accordance with the contract documents, see. o paragraph 1. Article 38., May be considered.

In the case of goods and services purchased, the buyer has authorized variants may not reject a variant on the sole ground that the deal, if it were made, would be a service instead of a supply contract or a supply contract instead of a service.

■ **Article 42.** *Subcontractors.*

[Must be required in the tender documents that the bidder any share of the contract he intends to have a third party perform as a subcontractor and such information shall be provided before the contract is signed. The contractor shall also inform the buyer of any subcontractors it intends to use and seek the approval of the buyer before the subcontractor's work. Information bidder subcontractors shall not affect the responsibility of the bidder to the buyer. Subcontracting shall in all cases be based on a written contract.] ¹⁾

¹⁾[Act No. 58/2013, Article 2.](#)

■ **Article 43.** *Conditions for performance of the contract.*

A contracting authority may impose specific conditions, in particular regarding social and environmental issues relating to the implementation of the contract, provided that these conditions in accordance with the rules of the EEA Agreement and were specified in the notice or the specifications.

■ **Article 44.** *Obligations relating to taxes, environmental protection, employment protection and working.*

The contracting authorities in the contract documents with any body or bodies a candidate or tenderer may obtain information on the obligations relating to taxes, environmental protection, workers' rights and working conditions for operations in Iceland or the municipality where the work to won or services the performance of the contract.

Contracting authority which supplies the information referred to in paragraph 1. shall request the candidates or tenderers that they assume that they have taken into account their responsibilities regarding workers' rights, employment and other conditions for operations in Iceland or the municipality where the work to won or service to perform when they made its offer.

Paragraph 1. does not prevent the application of the provisions of Article 73. of abnormally low tenders.

■ **Article 45.** *Assumptions buyer for the award.*

Award criteria should either be based on the lowest price or economic advantages from the perspective of the buyer. The assumptions underlying the assessment of the feasibility shall be the subject of the contract, such as quality, price, technical properties, aesthetic and functional characteristics, environmental characteristics, operating costs, operating efficiency, maintenance, delivery date and delivery period or the end of the Convention.

In the notice, the contract documents or the descriptive document, or in the case of a competitive dialogue, shall specify the criteria for the award as accurately as possible. Such criteria may not refer to factors other than those that may be based on data provided by tenderers, or other objectively.

In the documents referred to in paragraph 2. shall specify the relative weighting of each criterion referred to as a prerequisite for the award. This weight can be written as a certain

interval within a reasonable maximum tolerance. If it is impossible to specify a particular weighting of the criteria of reasons to demonstrate the sort criteria in order of importance.

VII. Chapter. Eligibility of candidates and tenderers in public procurement.

■ Article 46. General rules for companies.

It is prohibited to reject a candidate or tenderer by reference to national rules requires the provision of services needs to be either natural or legal person, provided that the participant or tenderer may provide the service plans to buy by law established his kingdom. In the case of service contracts as well as supply contracts also include services and / or control and configuration, may require legal persons to indicate in the tender or participate, the names and relevant professional qualifications of the staff to be on the implementation of the Convention.

More companies may stand to tenders or jointly, as long as they are jointly responsible for performance of the contract. It is prohibited buyer to insist on this group of companies based on specific legal form unless it is necessary for the satisfactory performance of the contract. The buyer may, however, require that a company is acting on behalf of the execution of the contract and fulfilling all commitments.

■ Article 47. Personal situation of the candidate or tenderer.

Candidate or tenderer who has been convicted by final judgment for the following offenses shall be excluded from participation in a public contract:

- a. participation in a criminal organization,
- b. corruption,
- c. cunning,
- d. money laundering.

According to the buyers should ask candidates or tenderers to supply data on the items specified in sub-paragraph d. If the buyer doubts concerning the personal situation of the candidate or tenderer is entitled to refer to the competent authorities in order to obtain the necessary information on these items. If the information concerns a candidate or tenderer from another state may request the cooperation of the competent authorities of the state. With regard to the law of that State query directed at individuals and / or legal entities, including, if appropriate, company directors and any person having powers of representation, decision or control the candidate or tenderer.

May be excluded from a contract where any of the following:

- a. Farm operator is bankrupt or is being wound up, it has entered into an arrangement with creditors or of any other similar situation.
- b. Has been applied for liquidation or dissolution of the company, it has sought permission for arrangement with creditors or is in any other similar situation.
- c. Company has a final decision been found guilty of criminal misconduct.
- d. Companies have shown grave professional misconduct, the buyer can demonstrate.
- e. Company is in arrears in pension contributions or similar legally mandated fees.
- f. Company is in arrears with taxes, or similar legally mandated fees.
- g. Company has given false information about the financial and technical capabilities or does not supply such information.

In assessing whether a g apply with the company should consider whether the case of the same entity, the same or almost the same owners in the same or almost the same industry in the same market, regardless of whether the company has changed social security number or be re- established. To this end, may investigate the business management and main shareholders.

If a company is required to provide evidence of the items specified in paragraph 1. or a, b, c, e or f paragraph 2. following shall be regarded as sufficient evidence:

a. With regard to the conditions of paragraph 1. and A, B and C of paragraph 2., the disclosure of criminal record certificate, a certificate of a court or, if these certificates are not available, a comparable certificate of authority or court of origin or the country whence that person comes showing that these requirements have been met.

b. With regard to e and f paragraph 2., A certificate issued by a competent authority in the state.

Where the country does not issue such documents or certificates this, or such documents and certificates do not cover all the cases specified in paragraph 1. and A, B and C of paragraph 2., should be replaced by a declaration on oath or by a solemn declaration that the bidder has won by the person concerned before a judge or authority, a notary or a competent professional in his home state.

[The Ministry] ¹⁾ shall designate the national authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3. and the EFTA Surveillance Authority. Such notification shall be in violation of privacy laws and privacy policy.

¹⁾[*Act No. 126/2011, Article 466.*](#)

■ **Article 48. Qualification.**

It may require that national company demonstrates that it is listed in Business. In the case of companies from other states of the European Economic Area or a member of EFTA may require the company to demonstrate adequate registration in their home state by oath or certificate under. IX. Annex A of the Directive in the case of works contracts, IX. Annex B of the Directive in the case of supply contracts and IX. Annex C of the Directive in the case of service.

In the case of the type of service and the bidders or participants must have a special license or be a member of certain organizations to be allowed to give the service in his home state may require that they demonstrate that they have the appropriate license or are members of the relevant organizations.

■ **Article 49. The financial position of the bidder.**

The financial position of the Company shall be loyal to it to meet its obligations to the buyer. Do not require additional data on proof of financial capacity is necessary based on the nature and extent of the proposed purchase. In general, a Proof of financial standing by submitting one or more of the following data:

a. Appropriate statements from banks or, where appropriate, evidence of performance bond or other security for the safety of the purchaser of the possible failure Company.

b. Audited annual financial statements for previous years, or an extract from them if required publication of the balance sheet under the law operator is established.

c. A statement of the undertaking's overall and, where appropriate, sharing of goods, services or work covered by the contract, because the three preceding financial years, however, to be taken into account when a company was founded or when it was launched and to what extent this information is available.

Companies may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal relationship of the company with them. If this is done must prove to the contracting authority that it will have the necessary resources available, including the manner that the undertakings concerned an undertaking separate entity for this purpose.

The same conditions as specified in Article 46. can more companies that are participating in the group or based on common financial capacity.

The contract notice or tender documentation must specify the data under. Paragraph 1. required the company to submit or may at a later stage be asked to submit. It shall also specify any required financial documents if it comes to that.

When a bidder is unable to submit the data referred to in paragraph 1. he may prove his

financial capacity by any other document which the buyer considers appropriate.

■ **Article 50. Technical capacity.**

□ Technical capacity Company shall be sufficiently secure that it can meet its obligations to the buyer. As to the nature, scope, importance or intended use of the work, service or product you can Proof of technical capacity with the following data:

ai A list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the largest works in case of works procurement. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried professionally and satisfactorily completed. Where appropriate authority shall submit these certificates it directly to the buyer.

ii. A list of the principal deliveries effected or services provided in the past three years, with the value of goods or services, recipients, whether public or private, in the case of procurement of services and products. When the recipient of goods or services has been an official member of the proof of delivery of the goods or services provided by the buyer certificate issuing or confirming with his signature. When the recipient of goods or services has been private, the proof of delivery of the goods or services provided's certification or, if this is not possible, a statement himself.

b. An indication of the technicians or technical bodies involved, whether governed directly by the company or not, which will be the implementation of the Convention, especially those responsible for quality control and execution in the case of works contracts.

c. A description of the technical facilities and measures to ensure the quality and facilities for study and research.

d. In the case of products or services that are complex or are required for a special purpose: a review of production buyer seller of goods or the technical capacity of the provider of services as well as inspection of research facilities and quality control bidder if necessary. The competent official body of the Member State in question may carry out inspections on behalf of the buyer in accordance with the rules applicable to such person.

e. With information about education and qualification service provider or contractor and / or employees of the Company, especially those responsible for providing the services or managing the work.

f. In the case of works contracts and public service contracts in cases where appropriate, with information on the environmental management measures that companies can apply when performing the contract.

g. A statement of the average number of employees and the number of managerial service provider or contractor for the past three years.

h. A statement of the tools, plant or technical equipment the service provider or contractor for carrying out the contract.

i. An indication of the proportion of the contract which the service provider or contractor intends to subcontract.

j. In the case of supplies: samples, descriptions or photographs that make it possible to verify that the product is adequate or certified by official quality control institutes or agencies of recognized competence product complies with the specifications or standards that have been referred to.

□ Companies may, where appropriate and for a particular contract, rely on the technical capabilities of other entities, regardless of the legal relationship of the company with them. If this is done must prove to the contracting authority that it will have access to the necessary technology for the implementation of the Convention, for example, such that the undertakings concerned an undertaking separate entity for this purpose.

□ The same conditions as specified in Article 46. can more companies that are participating in

the group or rely on the technical capacity.

In the case of supply contracts involving siting and installation of services and / or execution of the works may be assessed separately firm's capability to provide the service, the installation or the work piece, in particular with regard to their skills, efficiency, experience and reliability.

The contract notice or tender documentation must specify the data under. Paragraph 1. required the company to submit or may at a later stage be asked to submit.

■ **Article 51. *Quality standards.***

Where the buyer requires certificates drawn up by independent bodies attesting that the company meets certain quality assurance standards should be referred to the European quality assurance systems based on the relevant European standards, provided that these standards adopted by the organization that fulfills the requirements of European standards for such approval . Authorities shall recognize equivalent certificates from bodies established in other EEA member states and member states of EFTA. They shall also accept other data, the company submitted that provide equivalent evidence that adequate measures have been taken with regard to quality standards.

■ **Article 52. *Environmental standards.***

Where the buyer requires certificates drawn up by independent bodies attesting that the company meets certain environmental standards, see. in paragraph 1. Article 50. Shall be referred to EMAS (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to EU law or the relevant European or international standards concerning certification. Authorities shall recognize equivalent certificates from bodies established in other EEA member states and member states of EFTA. They shall also accept other data, the company submitted that provide equivalent evidence that adequate measures have been taken with regard to environmental management.

■ **Article 53. *The submission of additional data and information.***

The buyer may give companies an opportunity to increase the presented documentation provided. 47 to 52. Article. or clarify them at any stage of the tender.

■ **Article 54. *Official lists of approved economic operators and certificates of public and of private institutions.***

Companies listed on the official list of approved contractors, suppliers or service providers or certified as such by the public or private bodies in other states of the European Economic Area or countries of EFTA may, with confirmation of their registration on the list or certificate, proof of the following conditions are met, unless otherwise revealed:

a. The company meets the requirements of paragraph 1. and A, D and G paragraph 2. Article 47.

b. The company fulfills the requirements of Article 48.

c. The company fulfills the requirements of Parts B and C of paragraph 1. Article 49.

d. The company meets the conditions i. point a and point b, e and g of paragraph 1. Article 50. and h-point of that paragraph in respect of the contractor.

e. The company meets the requirements ii. point a and point b, c, d and j of paragraph 1. Article 50. in the case of suppliers.

f. The company meets the requirements ii. point a point and c-i-paragraph 1. Article 50. in the case of service providers.

May be challenged information registration list or certificate carries with it no reason. For the purposes of payment of pension fund contributions and taxes, however, may at any time require a supplementary of the listed company.

Buyers should apply paragraphs 1 and 2. in favor of companies established in the European Economic Area State or Member States of the European Free Trade Association and listed on

the list there.

VIII. Chapter. Implementation of public procurement.

■ Article 55. Commercial auctions.

Must be advertised in a public offering, including the general framework agreement auction, prominently so that all interested companies to participate in the auction. The contract notice shall contain sufficient information to businesses can decide if they wish to participate in the tender.

At the same time, or after notice, the buyer may encourage specific parties to participate in the tender. Do not, however, afford such parties other than information set out in the notice of auction.

■ Article 56. Pre-qualification of restricted procedures, competitive dialogue and negotiated.

Restricted procedures, competitive dialogue and a negotiated procedure shall be chosen participants with pre-selection in accordance with the provisions of this article.

Shall be advertised for pre-qualification prominently so that all interested companies to participate in the selection. The notice shall contain sufficient information to businesses can decide if they wish to participate in the selection and following the auction.

The pre-selection may limit the number of participants selected to participate in the tender, competitive dialogue or negotiated, provided that a sufficient number of participants take part in the selection. The announcement of the selection should include objective and non-discriminatory criteria or rules that form the basis for selection of participants in the pre-selection, with their minimum and maximum number if applicable.

The pre-qualification for a closed tender participants must be selected to submit bids may not be less than five. The pre-qualification of contract after publication of a tender notice for a competitive dialogue participants shall not be less than three. Number of candidates invited to participate shall be sufficient to ensure genuine competition.

Buyer must provide a minimum number of participants the opportunity to participate in the tender corresponding to the minimum that he has previously given. If the absence of a sufficient number of participants that meet the requirements of carrier selection to be selected, or absence of a sufficient number of participants meeting the requirements of capacity, the buyer is entitled to proceed with tendering by giving those who meet these requirements opportunity to participate in the tender. It is not permitted to give businesses not involved in pre-selection to participate in the tender at this stage. The same applies to those participants who do not fulfill the requirements for the qualification.

When buyers use their powers to reduce the number of bids or the number of participants in competitive dialogue or negotiated procedure after publication of a notice pursuant to. Articles 31 and 32., Such decisions shall be based on selection criteria that have been in the notice, specifications or descriptive data. In the final stages, the number of participants to be sufficient to ensure genuine competition insofar as sufficient or suitable participants in the case.

■ Article 57. The deadline for receipt of tenders.

The deadline for submission of tenders must be sufficiently long to allow bidders to prepare their tenders.

■ Article 58. Time limits to the public.

The deadline to submit offers to the public shall be at least fifteen calendar days. Period shall be calculated from the day following the auction ad, including opening day. All calendar days are included.

■ Article 59. Deadlines in a private placement, competitive dialogue and negotiated.

The deadline for submitting requests to participate in the pre-qualification for the restricted

procedure, competitive dialogue or negotiated procedures after publication of a tender notice shall be at least fifteen calendar days. Period shall be calculated from the day following the auction ad, including opening day.

Those that have been in the pre-qualification for restricted procedures shall be given at least ten calendar days to submit bids. The deadline calculated from the date when the contract documents are sent out. Otherwise, the same rules on decision time and the public offer.

■ **Article 60.** *Express Auction.*

If it is necessary to accelerate the auction grounds buyer can not be attributed may derogate from the limits laid down in Articles 58 and 59. The deadline for receipt of tenders shall in no case be less than seven calendar days from the publication.

■ **Article 61.** *Transmission of data.*

Tender documents should be ready for delivery within three days of publication of the notice.

■ **Article 62.** *Site inspections.*

If it is not possible to submit bids without bidders or participants inspecting the site, or if this is available on-site inspection should extend a time limit as a reasonable time for inspection if this is requested by tenderers or participants.

■ **Article 63.** *Questions and comments during the tender period.*

For any detailed documentation or detailed definition of documents or other documents related to the tender inquiry be brought to the purchaser or mentor tender, if it is the case, not later than seven calendar days prior to expiration.

If the buyer reason to provide new data or respond to a query under. Paragraph 1. the documents or query, and answers to all parties that have requested and been sent tender documents. New data or explanations must receive tenderers no later than four calendar days before the expiration.

Any inquiries, comments on the award notice shall be in writing, see. However, Article 68.

■ **Article 64.** *Offer withdrawn.*

A bidder may withdraw his bid before the opening of tenders, provided it is done in writing or by other equally secure manner.

■ **Article 65.** *Opening last suspended.*

Need to postpone the opening of tenders should be made at least four calendar days' notice. If less than four days until the opening may not be announced suspension but should be held an opening and recording who submit an offer without opening them. Those who submitted tenders will be invited to participate further.

■ **Article 66.** *Delivery bids.*

Written bids must be submitted in a sealed envelope and the name and address of the bidder appear on the envelope with the name of the tender and number, where applicable. Tenders submitted by electronic means shall be in accordance. Article 68.

If tenders are sent by mail or fax, the tenderer is responsible for ensuring that they are in the right hands for the opening of tenders.

May be submitted only in the total bid amount if unit prices and other required materials have been submitted in a sealed envelope or have verifiably been mailed the day before tenders are opened. A bidder can then request that the unit price will not be examined unless his tender is considered.

Offers must be signed by a competent body.

■ **Article 67.** *Variants.*

Is a variant made should be stated separately on the offer sheet for such an offer to yours. Variants must be accompanied by a clear and concise description of the way in which deviates from the technical tender.

■ **Article 68.** *Forms of tenders and other communications between contracting authorities*

and tenderers.

All communication and information exchange referred to in this article may be made by mail, fax, electronic means under. 4 and 5., Telephone in the circumstances referred to in paragraph 6. or by a combination of these agents, as determined by the buyer.

The means of communication chosen must be generally available and not impede access to the tendering process.

Communication, exchange and storage of information shall be carried out in a manner that ensures that the data is unchanged from the original model. In addition, ensure that the confidentiality of tenders and the participation is not interrupted and the buyer can only examine the content of tenders or requests to participate on tenders or deadline for submitting requests to participate has expired.

The device used by electronic communications, as well as their technical characteristics, must be generally available and interoperable with the information and communication technology products in general use. The equipment may not be the type that could lead to different companies.

The following rules shall apply to devices for the electronic transmission and receipt of tenders and requests to participate:

a. The conditions for the electronic submission of tenders and requests to participate, including encryption information shall be made available to all interested parties. These devices must also satisfy the requirements set out in Annex X..

b. In compliance with the [law on electronic signatures, no. 28/2001](#) , to require that tenders be accompanied by an advanced electronic signature.

c. Or prior to the deadline for submitting the request to participate shall expire bidders or participants submit the data referred to in the 47 to 52. Article. and Article 54. if they are not available in electronic form.

The following rules apply to the transmission of requests to participate:

a. Requests to participate in the tender may be made in writing or by telephone.

b. Where requests to participate are made by telephone shall send a written confirmation before the deadline for their receipt.

c. The buyer may require for participation made by fax or electronic means are established when necessary to the existence of legal proof in this regard. Any such requirement, together with the time limit for sending confirmation by post or electronic means, shall be included in the notice.

■ **Article 69.** *Opening bids.*

Bidders shall be allowed to be at the opening of tenders and they are entitled to the following information read aloud as they occur in the bids:

a. Name bidder.

b. The total bid amount.

c. If the offer is presented as a variant.

When tenders are submitted electronically, it is sufficient that tenderers are informed of the items specified in paragraph 1. by the end of the offer period.

Tenders received too late must be returned to the bidders unopened together with an explanation of the reasons for their return.

The Minister may by regulations set specific rules for the opening of tenders set out electronically, provided that the provisions of that stated in Article 68.

■ **Article 70.** *Electronic auctions.*

The buyer may buy in with an electronic auction in accordance with provisions of this Article.

In the case of open or closed or negotiated under. Paragraph 1. Article 32. and possible to enter specifications fixed with precision buyer may decide that the agreement will be

concluded by electronic auction. Under the same conditions, the use of an electronic auction when the competition takes place between more under the framework agreement. 4th paragraph. Article 34. and the auction in accordance with a dynamic purchasing. Article 35. The electronic auction shall be based on either the price, the criteria for the award are the lowest price, or price and / or other items in a bid observed in the specifications, the criteria for the award are the most economically advantageous bid.

A buyer who decides to hold an electronic auction shall state that fact in the notice. The specifications shall include the following information:

- a. The value of the items subject to auction, provided that these items will require to be able to assess in figures or ratios.
- b. Any limits on the values which may be referred to in the specifications regarding the purchased.
- c. Information bidders will be provided during the electronic auction and when they will be provided, as appropriate.
- d. Relevant information concerning the electronic auction system.
- e. Conditions for tenderers, in particular, the minimum differences the new bidder if such conditions exist.
- f. Relevant information concerning the electronic equipment used as well as information on how and subject to any technical requirements tenderer may be associated with an electronic auction system.

Before commencing the electronic auction, the buyer shall take full evaluation of the tenders in accordance with the award criteria and their weight. All bidders that have submitted bids shall be invited simultaneously to submit new prices and / or value. The notice to bidders shall provide all necessary information about the bidder shall be related to the electronic auction system as well as information about the date and time of the start of the electronic auction. Electronic auction may take place in more phases. The electronic auction may not start sooner than two working days after the report was sent to the bidders.

Once the contract is awarded to the most economically advantageous tender must be accompanied by a notice to the bidder evaluation of his tender proceedings in accordance with Article 72. The notice shall also include the calculation model used in the electronic auction to determine the automatic rankings on the basis of the new and / or new values submitted have been. That formula shall incorporate the weighting of all the criteria defining economically advantageous tender as these criteria have been specified in the notice or contract documents. Any weighting ranges assessing values observed in the notice or contract documents shall be defined as a fixed value. Where variants are authorized shall establish a separate calculation for each allowable deviation.

Throughout each phase of an electronic auction, the buyer shall be tenderers sufficient information to enable them to ascertain their relative rankings at any point in time that is. Buyers can also informed bidders on other matters relating to the price or value that have been set, provided that that is stated in the specifications. Buyers can also announce the number of participants in that phase of the auction. The buyer is not permitted under any circumstances to disclose the name of the bidder at any stage of the auction is.

The buyer must complete an electronic auction in one or more of the following:

- a. By specifying a predetermined date and time for the end of the auction in the notice where the tenderer was invited to participate in the auction.
- b. When they receive no more new prices or values that comply with the minimum changes. Under these conditions shall be stated in the notice, which the tenderer was given the opportunity to participate in the auction, the time limit will be allowed to elapse after receiving the last until the auction is completed.
- c. When the phases in the auction as stipulated in the notice, which the tenderer was given

the opportunity to participate in the auction, has been completed.

When the buyer decides to complete the auction in accordance with c-section, as appropriate, also refers to the procedures referred to in paragraph shall be scheduled for each phase of the auction in the notice where the tenderer was invited to participate in auction.

When electronic auction has been completed, the buyer shall select the most cost-effective deals that have seen the auction in accordance with Article 72. The buyer is not allowed to abuse the electronic auction, or use it in order to prevent, restrict or distort competition or to change the subject of the contract as it was presented to the bidders in the tender notice and defined in the specification.

IX. Chapter. Award.

■ **Article 71.** *They offer to be considered.*

In determining the buyer to conclude an agreement should only look for valid tenders, including valid variants, from companies, which have not been dismissed under. Articles 47 and 48. Meeting the requirements of financial standing and professional and technical capacity and other issues, see. 49 to 54. Article., and have been selected to tender in accordance with Article 56. If the selection has been the case.

■ **Article 72.** *Evaluation of the most efficient available.*

The award shall be presumed that the most efficient available. Cost-effective tender is who has the lowest price or the tender which meets the needs of the buyer the best according to the criteria that have been set out in the contract documents, see. Article 45.

May not be evaluated on criteria other than those set out in the contract documents, see. Article 45.

May select more than one tender procurement is divided into several separate parts in the contract documents.

■ **Article 73.** *Abnormally low tenders.*

[If a tender appears to be abnormally low in relation to the goods, works or services to be procured, the buyer shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant. This information may relate in particular:

- a. economics of the construction method, manufacturing process or services,
- b. technical solutions, which have been selected, and / or any exceptionally favorable conditions tenderer for the execution of the works, the supply of goods or services,
- c. originality of proposals bidder for works, supplies or services,
- d. accordance with the provisions on working conditions at the place of execution of works, delivery of goods or provision of services takes place,
- e. wages, other terms and conditions of staff,
- f. potential bidder that receive state aid.

Buyer shall verify the components of the offer by consulting the tenderer, taking account of the data submitted.

Where shoppers to the conclusion that the tender is abnormally low because the tenderer has obtained State aid will be offered his only rejected the tenderer has failed within a reasonable time as determined by the contracting authority was given the opportunity to express themselves, to demonstrate that state aid was granted legally. If the buyer rejects a tender in these circumstances, it shall inform the Authority of the decision.

The buyer is obliged to give reasons for the decision to reject the bid on the basis that it is abnormally low. Contact the buyer receives under this Article shall be treated as confidential.] ¹⁾

¹⁾[Act No. 58/2013, Article 3.](#)

■ **Article 74.** *Rejection of the offer.*

The buyer is deemed to have snubbed if he has a contract with another party, the duration of the tender has expired without having been requested extension or if all tenders have been formally rejected.

The buyer is prohibited from using or offer ideas bidder in any way after it has been rejected.

■ **Article 75.** *Notice Reasons for rejection of the bid and other decisions.*

Buyer shall notify the candidates or tenderers of decisions on the framework agreement, award or admittance to a dynamic purchasing system, as soon as possible. The notification shall include, as appropriate, justification for the decision not to make a framework agreement, taking no bids despite tendering or to recommence the procedure or implement a dynamic purchasing system. ... ¹⁾ This reasoning buyer shall provide in writing if desired.

[The announcement of the decision to award under. Paragraph 1. shall include the name of the bidder was selected and information about the features and benefits of the offer by the contracting authority with regard to the award criteria of tender documents. Such notification shall also include a statement of the precise waiting period under contract. Article 76.] ¹⁾

On request, the buyer shall, as soon as possible, provide the reasons for its decision as follows:

a. Should be informed participant who has not been selected to tender, the reasons why his application was rejected.

b. Should be informed tenderer of the reasons why the offer was rejected. If the offer has been rejected by reference to the bid comply with the specifications, see. 4 and 5. Article 40. Shall give reasons why the offer is not fulfilling the technical specifications or why it is inadequate in terms of effective and practical use.

c. Inform the tenderer which has submitted a valid tender of the characteristics and advantages of the tender by the contracting authority and the name of the bidder was selected or framework agreement.

Request for justification under. [3. paragraph.] ¹⁾ shall be lodged within 14 days of the bidder was announced and a decision should be justified, not later than fifteen days after the request was received by the buyer or administrator of the tender. The reasons shall not disclose the items referred to in paragraph 1. concerning the award, the conclusion of a framework agreement or dynamic purchasing access if disclosure could impede law enforcement. The same applies if disclosure would otherwise be against the public interest or would prejudice the legitimate commercial interests of particular enterprises, whether public or private, or competition between them.

[Notification as provided. 1 and 2. shall be sent to all companies that have not been rejected or dismissed procurement procedure with a final decision. A decision on the exclusion is not considered final until it has been reported bidder and deadlines to be referred to the Public Procurement Complaints Commission has expired or has been confirmed by the commission.] ¹⁾

¹⁾[Act No. 58/2013, Article 4.](#)

■ **Article 76.** *[Withdrawal contract and accepted the offer.]* ¹⁾

[may not conclude an agreement following the decision to award until after a ten-day waiting period from the day after the announcement under. 1 and 2. 75 paragraph. considered published. Standby time is considered, however, always completed following the expiration of fifteen days from the day after sending the notification. The publication of electronic notices, including notices by fax, depending on the provisions [of Article 39. Administrative no. 37/1993](#) , cf. [Article 6. Act. 51/2003](#) .

Period under. Paragraph 1. does not apply in the following circumstances:

1. When an agreement that may be made without prior contract notice.

2. When concluding an agreement in the final runs for only one bidder or participant

exists.

3. When an agreement on the basis of dynamic purchasing systems according to. Article 35. Framework or under. Article 34.] ¹⁾

Bids shall adopt the final writing within its duration and then reached a binding agreement on the basis of tender documents and tender bidder. [When the buyer is unable to take a position within the last offer period may request that bidders place their offers long for a short time. The condition is that the consent of all participants or objective grounds justice extension. With the same conditions may request, after the tenders has expired, the bidders declare that their offer is valid again, though only for a very short time. Once the contract has been declared under the provisions of Article XV. section may accept an offer that would have rightly should have to choose regardless of the offer period.] ¹⁾

may be a separate contract for the purchase of goods, services or works on the basis of the offer after the offer has been accepted, but should not be the fundamental change bid thus distorting competition or inequality.

Once a deal under. Paragraph 1. it shall inform all tenderers without delay.

¹⁾[Act No. 58/2013, Article 5.](#)

■ **Article 77. Artificial contractor.**

[Employment relations between the parties is a fundamental principle of communication workers and employers.] ¹⁾ Contractors and subcontractors may not conclude a subcontract with individual employees or groups of employees in cases where the employment relationship is involved or with according to custom and nature.

¹⁾[Act No. 58/2013, Article 6.](#)

Section 3. Public procurement in the European Economic Area.

Chapter X. Scope of this section, the authority of administrative etc.

■ **Article 78. Public procurement in the European Economic Area.**

The provisions of this Section and administrative actions that have been authorized by its provisions apply to public procurement above the threshold that the Minister shall publish in local currency in regulation ¹⁾ in accordance with Articles 7, 8 and 9. Directive. Regulation shall also publish the thresholds referred to in paragraph 1. Article 35. Directive and the thresholds for a type of works concessions, see. 56 and Article 63. Directive and thresholds for design, see. Article 67. Directive. In determining the thresholds should take into account changes that may have been made under. Article 78. Directive, provided that the relevant acts have been incorporated into the EEA Agreement. Review the thresholds every two years, for the first time on January 31, 2008.

The Minister shall issue regulations ²⁾ the rules of the tender notice and other reports of procurement in the European Economic Area in accordance with the acts referred to in the XVI. to the EEA Agreement. The Minister may also by regulations issue further rules on public procurement under the threshold. Paragraph 1., They comply with the Directive and other obligations of Iceland under the EEA Agreement.

¹⁾[R. 755/2007](#), cf. [614/2012](#) and [582/2014](#). [Reg. 615/2012](#). ²⁾[R. 411/2008](#), cf. [933/2010](#). [Reg. 441/2013](#).

■ **Article 79. Implementation of public procurement above the threshold EEA.**

The Public procurement exceeds the thresholds provided. Article 78. must be accompanied by sections 35 to 43. Article. Directive and the rules referred to therein, as appropriate, as they may be amended in accordance with. Article 79. Directive. In other respects, follow the rules of section 2 of the Act with the following exceptions:

a. Before you can use for in paragraph 2. Article 27. to conclude contracts for part of the procurement without tender for up to 20% of the aggregate value of the contract value of the shares does not exceed the equivalent of EUR 80,000 in respect of supply and service contracts and EUR 1 million in respect of contracts.

b. In the case of procurement of services under. II. Annex B of the Directive, see. Articles 21 and 22. Directive, shall send a report on the award of a contract in accordance with the detailed provisions of paragraph 4. Article 35. Directive.

c. The conditions for a negotiated without prior contract notice is carried out, see. A paragraph 1. Article 33., Is the announcement of the use of this authorization is communicated to the Commission upon request.

d. If exercising the authorization Article 36. contracts for the design and construction of housing in the public sector must be accompanied by sections 35, 36, 38, 39, 41, 42 and 43 of. Directive.

e. If the conditions are met for the reductions under. Paragraph 8. Article 38. Directive may be reductions under. Paragraph 1. Article 76. or drop entirely from him that it is vital to make a deal immediately.

In the case of contracts not covered by paragraph 1. the buyer up to one may be published the notice.

XI. Chapter. Rules for making concessions and design work.

■ **Article 80.** *Works concessions above the threshold EEA.*

We made works concessions to the estimated value of which is equal to or above the threshold value of such contracts, eg. Regulation thresholds established under. Article 78. Shall follow the provisions of 56 to 65. Article. Directive.

■ **Article 81.** *Design threshold of relevance.*

In implementing the design because the value of which is equal to or above the threshold value of such competition, see. Regulation thresholds established under. Article 78. Shall follow the provisions of Articles 66 to 74. Article. Directive.

XII. Chapter. Reports, the EFTA Surveillance Authority, etc.

■ **Article 82.** *Reports on public procurement above the threshold EEA.*

[Ministry] ¹⁾ shall prepare a report in accordance with Article 75 and 76. Directive and the EFTA Surveillance Authority. Permitted by the regulations to govern the details of the bodies responsible for sending [the Ministry] ¹⁾ reports on their purchases and information to be included in the report.

¹⁾[*Act No. 126/2011, Article 466.*](#)

■ **Article 83.** *ESA's investigation.*

[The Authority may resort to the procedure provided for in paragraphs 2 to 4. paragraph. If the Agency finds, before the contract has been concluded, the implementation of procurement procedures covered by the Directive as it has been incorporated into the EEA Agreement had been committed a serious violation of the rules of the EEA Agreement on Government Procurement. The Minister shall be represented by the Icelandic government during this procedure. The benefit of this procedure is the minister may suspend such a procedure or another procurement procedure after notification of the Authority has received.

The EFTA Surveillance Authority announces the Icelandic state the reasons why it considers that the serious infringement has been committed and request that it be adjusted appropriately. No later than 21 days after notification of the Ministry shall send surveillance confirmation that improve violation has been corrected, a reasoned statement of the reasons why no correction has been made or the announcement of the procurement process and award of contracts have been suspended, either is through the minister or the Public Procurement Complaints.

A statement of the reasons why no correction has been made based upon the offense is already under consideration by the Public Procurement Complaints Commission or the courts or the resolution of the Board of Appeal had been referred to the courts. In these

circumstances, the Ministry shall inform the Authority about the outcome of such proceedings as soon as it becomes known.

When notified of the suspension of the procurement process temporarily, see. Paragraph 2., The Ministry shall inform the Authority when the suspension is lifted or the procurement process for the same purchases, in part or in whole, is restarted. This notification shall confirm that improvements have been made, or include the reasons why it has not been made.] ¹⁾

¹⁾[Act No. 58/2013, Article 7.](#)

Section 4. Government, appeal, etc.

XIII. Chapter. The management of public procurement and purchasing activities.

■ Article 84. *The management of public procurement.*

Public procurement covered by [the Minister] ¹⁾ as responsible for the implementation of this Act.

¹⁾[Act No. 126/2011, Article 466..](#)

■ Article 85. *Procurement Agency.*

The state will operate a central purchasing Procurement Agency. The agency responsible for procurement for government agencies and state corporations, examine joint needs for supplies and services and endeavor to co-ordinate procurement for state needs. Also, the Agency shall provide assistance and guidance on tendering and procurement as required. Any disagreement concerning the decision on selection of bids between the State Trading Center as manager of the offering and the buyer may refer the dispute to the [ministry]. ¹⁾

Procurement Agency dispose of state property that is no longer needed to be decided by [the minister]. ¹⁾

Procurement Agency conclude framework agreements on behalf of the state and responsible for tendering and other procurement procedures carried out by institutions for procurement, whether the thresholds provided. 20 or Article 78. [The Minister] ¹⁾ may allow individual institutions to handle their own procurement above the threshold.

¹⁾[Act No. 126/2011, Article 466..](#)

■ Article 86. *The legality of procurement and responsible procurement carried out by the State Trading Center.*

The buyer acquired the works, goods or services through the Procurement Agency is deemed to have fulfilled its obligations under this Act to the extent Procurement Agency have made it.

Before starting the procurement process on behalf of the Treasury of the Republic, the Agency may require the existence of a contract which includes a set of decision making and liability of the procurement process.

■ Article 87. *The aim of the operation of State Trading Center.*

Center shall endeavor to ensure the efficiency of the procurement. This objective should be achieved by:

a. developing a quality service in the field of public procurement, with knowledgeable and experienced in the field of procurement for government agencies,

b. developing procedures for tendering and procurement ensures equal treatment of tenderers and effective competition,

c. increasing productivity and simplifying public procurement of modern procurement, tenders and coordinated procurement,

d. facilitate business relations between suppliers and government agencies,

e. knowledge and experience to government agencies to meet the commercial needs of the state.

■ Article 88. *The CEO of the State Trading Center.*

[The Minister] ¹⁾ shall appoint a director for five years. Day operation of the Treasury of the Republic, responsible for finances and accounts. CEO makes the Agency's budget and policies to key priorities, tasks and procedures of the organization. CEO hires staff of the Organization.

¹⁾[Act No. 126/2011, Article 466..](#)

■ **Article 89.** *Fees State Trading Center.*

Government Purchases selling institutions and state service under the tariff by [the Minister] ¹⁾ shall, having received proposals from the Director of State Trading Center. The tariff shall be based on the income to cover its operating organization.

¹⁾[Act No. 126/2011, Article 466..](#)

■ **Article 90.** *Responsible for procurements.*

Government departments and state-owned company shall appoint a staff member who shall be responsible for procurements. He is required to monitor the purchases of the relevant ministry, agency or company comply with applicable laws and regulations on public procurement and procurement policy.

XIV. Chapter. Public Procurement Complaints Commission.

■ **Article 91.** *Role and composition of Procurement Complaints.*

[Public Procurement Complaints Commission consists of three members and alternates appointed by the Minister after the appointment of the Supreme Court for a four-year term. Two members and their alternates shall fulfill the legal requirements for a district court judge and one of whom shall be chairman. The third member and his deputy must have comprehensive experience and knowledge of the business. Committee members must be independent of the interests of the state and other public entities.] ¹⁾

[The role of the Public Procurement Complaints to resolve promptly and impartially complaints by companies because of alleged violation of this Act and regulations issued hereunder, including the provisions of the Directive, Directive 2004 / 17 / EC on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services [Directive 2009/81 / EC on the coordination of procedures for the award of the contracting authority or agreement of certain works contracts, supply contracts and service contracts in the fields of defense and security], ²⁾ as well as other EEA acts referred to therein.] ¹⁾

the Commission is independent in its work. Its rulings and decisions under this Act can not be appealed to other authorities.

At the request of [the Ministry] ³⁾ or a particular buyer's Public Procurement Complaints Commission may issue an advisory opinion on a particular procurement, if any complaint.

[Tender Complaints Committee deals only with the legality of local procurement to the extent that they fall under Section 3 of the Act.] ¹⁾

¹⁾[Act No. 58/2013, Article 8. Cf. and Temporary Provision. in year](#) ²⁾[Act No. 65/2014, Article 2.](#) ³⁾[Act No. 126/2011, Article 466..](#)

■ **Article 92.** *[Composition of the Board of Appeal in individual cases and specialized counseling.*

In cases involving substantial interest or otherwise considered important from the standpoint of public interest the chair decided that the committee is comprised of two members in addition to the permanent members. At least one of them fulfill the legal requirements for a district court judge and must be supported to handle the case by the Supreme Court nomination.

The Chairman may decide to call for advice and assistance Committee experts party. Shall work with the committee as determined by the Chairman, who is also determined by the commission.] ¹⁾

"Act No. 58/2013, Article 9.

■ **Article 93.** *Appeal.*

□ May be referred to the Committee by the companies that have rights under the Act and have legitimate interests in the resolution of the case.

□ [In the case of an alleged violation of the obligation to use the legal process or purchasing advertising procurement Legally protected interests other than dear conditions. The Minister also allowed an appeal for such violations regardless of the legally protected interests.] ¹⁾

□ A complainant may assign the right of appeal to an association or organization that safeguards his interests.

"Act No. 58/2013, Article 10.

■ **Article 94.** *The deadline for appeal.*

□ [An appeal must be lodged in writing with the Public Procurement Complaints Commission within 20 days of the applicant knew or should have known of the decision, act or omission which it believes violate their rights. Claims for inactivity agreement, however, may appeal to the board within 30 days after the specified deadline. It should be required Ineffectiveness not lodged when six months after its conclusion. We further determined period following shall apply:

1. When appealing against a decision to award or other decisions referred to in paragraphs 1 and 2. Article 75. the target period beginning with the publication of the reports mentioned therein, provided that they contain the required information.

2. already had a claim of ineffectiveness ever made without prior contract notice shall be the beginning of period following the filing of the award of the contract in the Official Journal of the European Union, provided it is carried out the reasoning Decision buyer of advertising not shopping.] ¹⁾

□ The complaint must contain information about the complainant, the person who complained that (the defendant) and decision, act or omission that is appealed. The complaint must contain claims of the complainant with a brief description of the circumstances of the case and reasoning. [The claims of the complainant shall be subject to remedies Committee under this Act. The applicant must notify the buyer of a review as soon as possible.] ¹⁾

□ If the appeal does not meet the requirements of paragraph 2. the Complaints Committee that the complainant remedy the deficiencies within a reasonable time. Should the applicant not by the Complaints Committee shall dismiss a complaint.

□ The Board of Appeal, always directing the applicant to submit further data or information to explain if it believes the case is not sufficiently clear and set him a time limit in order.

□ [For each complaint must be paid dear fee in the amount of 150,000.] ¹⁾

"Act No. 58/2013, Article 11.

■ **[94. Article. a.** *Legal effects of protest.*

□ Now the decision to award appealed within the statutory waiting period under. Article 76., And is then contract prohibited until the final Tender Complaints resolve the complaint. Automatically awarding of a contract following a complaint takes effect when the buyer must be aware of the application, whichever is the announcement complainant under. Paragraph 2. Article 94. or notice under the Board of Appeal. Paragraph 1. Article 95.

□ The Committee can, either at the request of the defendant or on its own initiative, decided to lift the ban on contracts. With such a decision, the provisions of Article 96. According to the. Protest committee's decision to lift the ban on negotiations will certainly not take effect until after the waiting period under contract. Article 76.

□ Other than resulting from paragraph 1. has appealed not entail automatic suspension of the procurement process.] ¹⁾

"Act No. 58/2013, Article 12.

■ **Article 95.** *Procedures and data collection.*

A complaint admissible under Article 94. the Committee shall defend an opportunity to comment on the substance of the complaint. ...¹⁾

...¹⁾

The complainant shall always be given a short deadline to comment on the comments of the defendant and others who have been given the opportunity to express themselves.

The proceedings shall be in writing, but the Commission to give the parties the opportunity to present oral submissions. [In the case brought before the Public Procurement Complaints Commission, which must take a position on the clarification of the Agreement on the European Economic Area, books with him, thereto or acts in the annexes mentioned and referred the Committee in accordance with Article 34. Agreement between the EFTA States on the Surveillance and Court handed down a ruling that will be sought advisory opinion of the Court for clarification on the details of the case before the case is resolved. Whether party to a case requires that such an opinion will be sought or if the committee deems necessary without the requirement shall give the parties the opportunity to comment before a ruling is made.]¹⁾

The Commission may require the parties to produce all documents and other information concerned. If a complainant this requirement may refer his appeal immediately. His defendant is not such a claim may be assessed his indifference to his disadvantage resolution of the case.

A majority vote of its members determines the outcome. Minority vote shall follow the opinion if it comes to that. Chairman or Vice-Chairman shall direct the work of the committee. When members are not unanimous in their conclusion majority shall determine the outcome. If the Committee is divided into three in its position, or the outcome can not be determined by voting, the vote of the chairman.

The Appeals Board shall issue a ruling on a complaint as soon as possible and no later than one month after it receives the comments of the complainant under Paragraph 3. if it comes to that.

The procedures before the Commission shall be determined by [the Administrative Procedures Act, no. 37/1993](#) .

¹⁾[Act No. 58/2013, Article 13.](#)

■ **[95. Article. a. Membership defense.**

The defendant shall issue a buyer or buyers more common, if it comes to that. If Procurement Agency or other centralized purchasing within the meaning of this Act has considered responsible for procurement, the institution also defending a case before the Committee. A contracting authority may include central purchasing representation for proceedings for Public Procurement Complaints Commission.

Now another company, such as another bidder in the tender or participant in the pre-qualification for the restricted procedure, a competitive dialogue or negotiated legally protected interest in the outcome of the Commission, it shall also be considered a party to protect.]¹⁾

¹⁾[L. 58/2013, Article 14.](#)

■ **Article 96. Suspension of the procurement procedure or a contract.**

[The applicant's claim is the Public Procurement Complaints Commission may suspend the procurement process temporarily, until a final decision has been reached complaint, provided substantial likelihood be led to violations of this Act to certain purchases that may result in the invalidation of the decision or other acts of the defendant. The same applies to violations of the provisions of the Directive referred to in the Act or a violation of regulations issued under the Act. In assessing whether the contract should stop for a while may look to their private and public interests at stake and reject the claim if these interests are considered more than the interests of the Company to demand way.

The applicant's claim, the provisions of Article 94 and Article 95. According to the. The deadline defendant to comment on the applicant's claim, it should be short and may depart entirely from him if there is no clear and obvious violation. A party may require the Commission provide decision under this article writing that such reasoning did not accompany the decision when it was announced.

The Appeals Board may determine in its rules under. Article 99. the chairman of the committee to take a decision under this article.

Denial of a claim for suspension temporarily does not affect other requirements which the applicant may be exhibited for public procurement.] ¹⁾

¹⁾[Act No. 58/2013, Article 15.](#)

■ **Article 97.** *Resource Public Procurement Complaints.*

[The Committee may order rescinded the decision of the contracting authority for public procurement, in part or in whole, expressed a contract ineffective according to detailed provisions of Article 100. a -100. Article. c and / or provide for other sanctions under. Article 100. d.] ¹⁾ The Commission may direct the buyer to provide certain procurement, advertising auction again or canceling certain unlawful terms in the contract documents.

The Committee may express its opinion on the liability of the defendant against the plaintiff, but expresses itself not the amount of damages.

The Committee may decide that the defendant pay the plaintiff the costs of lodging the complaint. If the complaint is clearly unjustified or lodged for the purpose of delaying the implementation of public procurement, the committee may order the plaintiff to pay the costs attributable to the Treasury.

Failure of the ruling committee under. Paragraph 1. it may decide to impose daily fines in a ruling that directed. Fines can be as high as 500,000. for each day that passes without compliance with the ruling of the committee. If the ruling is appealed to the court fines will not begin to accrue until the judgment is final.

Periodic penalties. 4th paragraph. go to the Treasury. Make by execution without prior judgment, for the enforcement of fines and acting according to costs. Paragraph 3.

[Paragraph 2. [Article 24. Act. 31/1990](#) , detention, injunctions, etc., should not be a hindrance to put a restraining order to act as a break would be contrary ruling of the Public Procurement.] ¹⁾

¹⁾[Act No. 58/2013, Article 16.](#)

■ **Article 98.** *Court action to invalidate a ruling of the Public Procurement Complaints.*

Now wants complainant, defendant or other party with legitimate interests at stake not accept the decision of the Public Procurement Complaints and may take legal action for annulment before the courts. Such action shall be brought within six months after the party was or should have become aware of the decision of the Appeals Committee.

If an action is brought to invalidate the ruling of the Public Procurement Complaints Committee shall not aim to protect. Otherwise defense involvement in such activities in accordance with the general rules.

■ **Article 99.** *Procedures for Public Procurement Complaints Commission, etc.*

Public Procurement Complaints Commission may adopt detailed rules, approved by the Minister, the production of documents, procedures for committee and publication of the ruling.

XV. Chapter. [The value of contracts, inactivity, penalties and other damages.] ¹⁾

¹⁾[Act No. 58/2013, Article 19.](#)

■ **Article 100.** *[The value of contracts.*

After binding agreement under this Act has come of it shall not be repealed or altered, even though the buyer decision on the tendering or awarding of the contract was unlawful.

The value of contracts awarded pursuant to this Act shall be determined by the general rules of commercial law.

The provisions of this section of ineffectiveness will be applied regardless of the value under. Second paragraph.] ¹⁾

¹⁾Act No. 58/2013, Article 17.

■ **[100. Article. a. Ineffectiveness.**

Public Procurement Complaints Commission can declare a contract ineffective under the provisions of this article, but only contract that exceeds the thresholds provided. Article 78. The ruling of inactivity agreement has the effect of rights and obligations under the main contract canceled. The ineffectiveness should be limited to those payments which have not yet been carried out. With regard to payments already carried out the protest committee shall provide for other sanctions under. Article 100. d. An appeal shall specify by which time the contract is declared and / or any further parts of the contract are inactive.

Tender Complaints Committee shall declare a contract ineffective in the following cases:

a. When a contract, including contract covered by the XI. section on the preparation works concessions and design, has been made an unauthorized without advertising in opposition to this Act and regulations issued under it.

b. Once agreement has been concluded the waiting period under contract. Article 76. or during a state under contract. Article 94. a process to:

1. the applicant has been unable to seek redress a complaint before the deal was made, the second invention violation of this Act and / or regulations issued under the Act and the third offense was liable to affect potential applicant to receive the contract.

c. Once the contract, the thresholds provided. Article 78., Has been prepared on the basis of a framework agreement contrary to the provisions of paragraph 6. Article 34. or within dynamic purchasing system according to. 5 and 6. Article 35.

d. Once agreement has been concluded if the procurement process, tendering or contract has been suspended by the Board of Appeal Tender under. 96. Article.] ¹⁾

¹⁾Act 58/2013, of 18.

■ **[100. Article. b. Exceptions to the ineffectiveness by notice without obligation.**

A contract shall not be declared out if all the following conditions are met:

a. Purchases are considered permitted without prior publication of a contract notice.

b. The buyer has published a notice under. Paragraph 3. that he intends to conclude a contract for purchase.

c. Agreement has been entered after the waiting period is at least ten days after its publication notice.

Agreement concluded on the basis of the framework agreement or dynamic purchasing system shall be declared if all the following conditions are met:

a. It is believed to have been complied with paragraph 6. Article 34. and 5 and 6. Article 35.

b. Buyer has sent a notice of award under. Article 75. to those bidders who have interests.

c. Contract has been initiated after the delay time according. Article 76.

The announcement of the buyer of his intention to conclude a contract for purchase, see. b paragraph 1. shall account for the buyer of the contract, the proposed counterparty and reasons for believing may enter into a contract without prior contract notice. In addition shall include other relevant information if it comes to that. The publication of notices shall follow the rules of publication of general notices, see. 55 and 79 of., As appropriate.] ¹⁾

¹⁾Act 58/2013, of 18.

■ **[100. Article. c. General may depart from ineffectiveness.**

Now, the committee believes that the Tender overriding reasons make continued performance of the contract is necessary and then it may reject inactivity if the conditions of

Article 100. b is satisfied. The Committee can authorize the continued implementation of the particular race that takes account of the buyer has had an opportunity to complete a new procurement procedure for the same purchase within a certain time. Complaints exercise this authority shall provide for other sanctions under. Article 100. d.

Financial interests of the agreement is executed shall only be considered as overriding reasons in exceptional circumstances ineffectiveness consequences would be excessive. Financial interests related to the agreement itself are not considered overriding reasons such as the cost of delays in the implementation of the content of the contract, the cost of a new procurement procedure, the cost of a new counterparty or the costs of legal consequences ineffectiveness.

Tender Complaints Committee shall communicate to the Commission annually copies of all decrees which authorized the first paragraph. has been applied.] ¹⁾

¹⁾[Act No. 58/2013, Article 18.](#)

■ **[100. Article. d. Other penalties: Administrative and short contract.**

Public Procurement Complaints Commission shall impose administrative fines on the contracting authority for the contract that exceeds the thresholds provided. 78. Article., In the following cases:

a. Once agreement has been concluded the waiting period under contract. Article 76. or during the suspension was under contract. Paragraph 1. Article 94. or Article 96 a., but the conditions of inactivity are not met.

b. When a contract is not declared at the beginning or only partially, see. Paragraph 1. Article 100. a.

c. When inactivity is rejected, in part or in whole, by overriding reasons of public interest, subject. Article 100. c.

Once more buyers stand to procurement jointly determine the penalty for each buyer. The same applies if Procurement Agency or other centralized purchasing has carried out purchases. Administrative fine shall be up to 10% of the planned value of the contract. In determining the amount of fines should take into account the nature and scope of the violation, the buyer process and whether and to what extent the agreement has been made to continue to operate.

Directors of Customs administrative collection that accrue to the Treasury. The fines are mature one month from the date of the decision. It can be execution without prior judgment, the implementation of the ruling of an administrative fine. Tender Complaints Committee shall notify the Director of Customs of the date of the decision of an administrative fine.

Instead of an administrative fine, in part or in whole, the Board of Appeal may shorten the duration of the agreement if it is found that such a decision is consistent with the nature of the offense and constitute a sufficient preventive.] ²⁾

²⁾[Act No. 58/2013, 18. Article.](#)

■ **Article 101. Liability.**

The buyer is liable for damages that violations of this Act, including the provisions of the directive referred to in the Act and regulations adopted pursuant to entail for the company. Companies need only to prove that it had a realistic chance of becoming a contract and that possibility was prejudiced by the violation. Amount of compensation shall be based on the cost of preparing a tender and participate in the tender.

For damages for breaches of the Act and regulations issued hereunder shall be determined by general rules.

XVI. Chapter. Applicable law, entry into force, drop shaped, etc.

■ **Article 102. [Introduction.] ¹⁾**

This Act shall include the implementation of Directive 2004/18 / EC of 31 March 2004 on

the coordination of procedures for the award of public works contracts, public supply contracts and public service as it was incorporated into the Agreement on the European Economic decision of the EEA Joint Committee No. 68/2006, published September 7, 2006 in the Official Journal of the European Union no. 44/2006.

[Is implemented Directive 2009/81 / EC on the coordination of procedures for the award of the contracting authority or agreement of certain works contracts, supply contracts and service contracts in the fields of defense and security, and amending Directives 2004/17 / EC and 2004/18 / EC, as it was incorporated into the EEA Agreement by EEA Joint Committee No. 129/2013 of 14 June 2013] ¹⁾

¹⁾[Act No. 65/2014, Article 3.](#)

■ **Article 103.** *Administrative attitude to public procurement.*

Point II. Section [Administrative no. 37/1993](#), of eligibility apply to decisions made under this Act. In other respects the Administrative not about decisions made under this Act.

■ **Article 104.** *General authority administrative.*

[The Minister] ¹⁾ may issue regulations ²⁾ on the further implementation of this Act.

¹⁾[Act No. 126/2011, Article 466.](#) ²⁾[R. 672/2012 . Reg. 1280/2014 . Reg. 1281/2014 .](#)

■ **Article 105.** *Applicable law on public procurement.*

Procurements have been announced for the commencement of this Act shall be governed by [law no. 94/2001](#) on Public Procurement. Reference should be made to the official publication of the notice or the estimated receipt of the notification if the participants in the case of procurement procedures that ads are not made public.

■ **Article 106.** *Applicable law for the functioning of the Public Procurement Complaints.*

This Act applies to the Public Procurement Complaints handling of complaints received by the Commission after the entry into force of this Act.

Replace the current members of the Public Procurement Complaints Commission shall remain in force despite the enactment of this Act. Procedures Public Procurement Complaints shall remain in force until new rules of the appeal committee shall have taken effect.

■ **Article 107.** *Entry into force.*

This Act shall take effect immediately. ...

Paragraphs 2 and 3 of the case. Paragraph 2. Article 19. shall enter into force on 1 January 2008.

Appendix I.

Whereas Directive 2004/18 / EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, especially Article 47. (Second paragraph.), Article 55. and Article 95.,

with regard to the proposal from the Commission (¹),

Having regard to the opinion of the Economic and Social Committee (²),

Having regard to the opinion of the Committee of the Regions (³),

in accordance with the procedure laid down in Article 251. Treaty (⁴) the joint text of the panel of 9 December 2003,

and taking into account the following:

1) In connection with the new amendments being made to Council Directives 92/50 / EEC of 18 June 1992 on the coordination of procedures for the award the award of public contracts for purchase of services (⁵), 93/36 / EEC of 14 June 1993 on the coordination of procedures for the award of public supply contracts (⁶) and 93/37 / EEC of 14 June 1993 on the coordination of procedures the award of public works contracts (⁷), but these changes are

necessary to meet requests for simplification and modernization made by contracting authorities and economic operators alike in their to the green Paper adopted by the Commission November 27, 1996, shall, for clarity, renegotiate Directives and bring them together in a single text. This Directive is based on the case law of the Court, in particular as regards the criteria for the award, which explains the possibility of contracting authorities that meet the needs of the public concerned, such as environmental and / or social services, provided that such assumptions related content contract, the contracting authority not unlimited freedom of choice, are expressly mentioned and in accordance with the principles set out in the second premise.

2) Contracts concluded in Member States on behalf of the state or regional or local authorities and other bodies governed by public law, fall under the principles of the Treaty, in particular the principle of free movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and rules from them, such as the principles of equal treatment, non-discrimination, mutual recognition, proportionality and the principle of transparency. In the case of public contracts above a certain value, however, provision should be made, which are based on these principles, to coordinate, at Community level, rules on the award of contracts in national Community to ensure the effects of the principles and ensure the opening up to competition in public procurement. These coordinating provisions should be interpreted in accordance with both the aforementioned principles and rules of the Treaty.

3) Such coordinating provisions should comply as far as possible with current procedures and practices in each Member State.

4) If a body governed by public law, is involved in the contract award of a public contract to a bidder Member States shall ensure that it does not cause any distortion of competition in relation to private tenderers.

5) According to Article 6. Treaty, to integrate environmental protection requirements into the definition and implementation of Community policies and activities referred to in Article 3. Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting authorities can contribute to environmental protection and sustainable development while ensuring the best value for money is achieved in the negotiations.

6) Nothing in this Directive should prevent the imposition or enforcement of measures necessary to protect public order, public morality, public security, health, human and animal life or the preservation of plants, in particular with regard to sustainable development, provided that these measures are compatible with the Treaty.

7) Council Decision 94/800 / EC of 22 December 1994 on the approval of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (⁸) was particularly approved the agreement on government procurement concluded within the WTO, hereinafter referred to as the "agreement", but it is made in order to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to liberalizing in international trade and promote them.

In view of the international rights and obligations of the Community resulting from the acceptance of the Agreement, the arrangements therein defined by tenderers and products from third countries that have signed the agreement. Agreement does not have direct effect. The contracting authorities covered by the Agreement which comply with this Directive and apply the latter to economic operators of third countries that have signed the Convention, it shall comply with the Agreement. It is also appropriate that those coordinating provisions should guarantee for Community economic operators conditions for participation in public procurement which are as favorable and the conditions under which economic

operators of third countries which are signatories to the Agreement.

8) Before launching a procurement contract begins contracting, technical dialogue, seek or accept advice which may be useful in the preparation of the specifications provided, however, that such advice does not have the effect of precluding competition.

9) In view of the public works contracts are diverse, contracting authorities may choose to make provision for contracts for the design and execution of work separately or jointly. This Directive is not intended to predict whether to contract jointly or separately. A decision on whether to award contracts separately or jointly should be taken with regard to quality and economic criteria, which may be defined by national law.

10) The contract shall be considered a public works contract if its subject matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary to permit such activities. Public service can in certain circumstances the work, particularly in the sphere of property management. If such work related to the main subject of the contract, and the potential consequence of, or addition to it, shall be considered not a valid reason to classify the agreement as a public contract be extended to such works.

11) Set Community definition of framework agreements, together with specific rules on framework agreements concluded in relation to contracts covered by this Directive. When the contracting authority makes a framework agreement in accordance with the provisions of this Directive, particularly with regard to advertising, time limits and conditions for submission of tenders, it can, under these rules, concluded agreements on the basis of and within the validity of such a framework agreement, either by using the terms of the framework agreement or, if all terms have not been determined in advance in the framework agreement, by the parties to the framework agreement to impose new bid on the terms that were not previously determined. If requested new bids must comply with certain rules whose purpose is to ensure the necessary flexibility and the general principles are respected, in particular the principle of equal treatment. For the same reason the terms of the framework agreement for no longer than four years, except in cases where the contracting authorities can duly justified.

12) are continually working to develop new electronic purchasing techniques. Such techniques help to increase competition and efficiency in public procurement, in particular due to the use of the savings in time and money. Contracting authorities may make use of electronic purchasing techniques, provided that such use complies with the rules established by this Directive and the principles of equal treatment, non-discrimination and transparency. In this context, it can offer, the bidder submits, especially when the request for new bids under a framework agreement or dynamic purchasing system, take the form of tenderer's electronic catalog if the latter uses the means of communication that contracting authority has chosen in accordance with Article 42.

13) In view of the rapid expansion of electronic purchasing systems is appropriate rules already to make contracting authorities to take full advantage of the possibilities offered by such systems offer. With this in mind, it is necessary to define a completely electronic dynamic purchasing system for commonly used purchases and to lay down specific rules for setting up and operating such a system to ensure fair treatment of all operators who wish to participate. Any operator who submits a tender in accordance with the specification and meets the selection criteria should be allowed to join such a system. This purchasing technique allows the contracting authority to, by establishing a list of tenderers already selected and given to new tenderers the opportunity to participate, to a particularly broad range of tenders as a result of the electronic equipment and ensure optimum use of public funds through a high level of competition.

14) because of the likelihood that the use of electronic auctions is growing, it is appropriate to set out a Community definition and be governed by the specific regulations to ensure that

they operate in full accordance with the principles of equal treatment, non-discrimination and transparency. It is therefore desirable to set a provision for such electronic auctions to deal only with the case of works contracts, public supply contracts and public service that can be determined with precision specifications. This is particularly the case for recurring supplies, works and service contracts. For the same reason it should also be possible to establish the respective bidders at any stage of the electronic auction. Recourse to electronic auctions enables contracting authorities to ask tenderers to submit new, lower price and, when the contract is awarded to the most economically advantageous bid, to advance the improvements in other aspects of the bid price. To ensure compliance with the principle of transparency, only the electronic auction, the factors that can be measured automatically by electronic means, without any intervention and / or by the contracting authority, ie only the elements that may contain the amount that can be expressed in figures or percentages. However, it should not be included in the electronic auction last areas relating to factors that can not be expressed in numbers. As a result, do not hold an electronic auction in the case of certain contracts and service contracts which include the implementation of intellectual property, such as design work.

15) The Member States have developed certain centralized purchasing techniques. Several contracting authorities are responsible for the procurement of public contracts or framework agreements for other contracting authorities. Because of the large volumes purchased, those techniques help increase competition and streamline public purchasing. It is necessary to determine the Community definition of central purchasing bodies dedicated to contracting authorities. Also should define the conditions under which contracting authorities which purchase works, supplies and / or services through a central purchasing must meet to be considered as having complied with this Directive taking account of the principles of non-discrimination and equal treatment.

16) In order to take account of different circumstances in the Member States should be allowed to choose whether contracting authorities may use framework agreements, central purchasing bodies, dynamic purchasing systems, electronic auctions or the competitive dialogue procedure, as defined and regulated by this Directive .

17) The more thresholds used for the application of the coordination provisions, the more problems it has lead to the contracting authority. With regard to monetary union must also set these thresholds in euro. Accordingly, thresholds should be set in euros in a way to simplify the application of such provisions, while ensuring compliance with the provisions of the thresholds laid down in the WTO Agreement which are expressed in special drawing rights (SDR). In this context, it is also appropriate to provide for periodic reviews of the thresholds expressed in euro so as to adjust them, where applicable, to potential changes in the euro against the SDR.

18) With regard to the application of the procedural rules of this Directive and for monitoring purposes, the best switching service sector into categories corresponding to particular headings of a common classification and by bringing them together in two Annexes, II. Annexes A and II. Annex B, depending on the system they belong. With regard to services II. Annex B, the provisions of this Directive shall not affect the application of Community rules specific to each service.

19) In respect of public service, the full application of this Directive is restricted during a transitional period, to contracts where its provisions will permit the full potential for increased cross-border trade. Patients should be monitored contracts for other services during this transitional period before a decision is made to apply this Directive to the full. It is therefore necessary to define the mechanism for such monitoring. This mechanism should also allow interested parties to access relevant information.

20) Public contracts which are awarded by contracting authorities operating in the water,

energy, transport and postal services relating to such activities fall within the scope of Directive 2004/17 / EC of 31 March 2004 coordinating the procurement procedures of entities operating water, energy, transport and postal services (°). Contracts, the contracting authorities in relation to services for maritime, coastal or river transport and lakes, must fall within the scope of this Directive.

21) of effective market competition in the telecommunications sector following the Community rules aimed at liberalizing the sector, has been implemented should be excluded from public contracts in the field of the scope of this Directive insofar as they are intended primarily to contracting authorities to exercise certain activities in the telecommunications sector. Those activities are defined in accordance with the definitions used in Articles 1, 2 and 8. Council Directive 93/38 / EEC of 14 June 1993 on the coordination of procurement procedures of entities operating in the water, energy, transport and communications (¹⁰), in such a way that this Directive shall not apply to contracts which have been excluded from the scope of Directive 93/38 / EEC under. Article 8. her.

22) Provision should be made for cases where it is possible to refrain from applying for coordinating procedures on grounds relating to State security or secrecy, or because specific rules on the award of contracts, based on international agreements on military bases, or which are specific to international organizations.

23) According to Article 163. Treaty, the encouragement of research and technological development to support the scientific and technological basis of Community industry, and with the opening up of public service contracts contributes to this end. This Directive shall not apply to co-financing research and development programs: research and development contracts are not covered by this Directive unless the parties only contracting authorities to conduct of its own affairs, on condition that the service is provided is wholly remunerated by the contracting authority .

24) In the area of services, contracts for the purchase or rental of immovable property or rights to such property have particular characteristics which make it inappropriate to apply the rules on public procurement.

25) The awarding of public contracts for certain audio-visual services for radio and television should take into account cultural and social factors that cause it is not appropriate to apply the rules on public procurement. For this reason, must make an exception for public service contracts for the acquisition, development, production or co-production of which is ready for use and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the program and contracts concerning broadcasting times. This exception shall not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programs. With broadcast means the transmission and distribution using any form of electronic network.

26) Arbitration and conciliation services are usually provided by bodies or individuals designated or selected in a manner which can not be governed by procurement rules.

27) In accordance with the Agreement, the financial services covered by this Directive do not include instruments of monetary policy, public debt, the management of public funds or other involving transactions in securities or other financial instruments; particularly in transactions by the contracting authorities in order to raise money or capital. Agreements related to the issue, purchase, sale or transfer of securities or other financial instruments are not covered. Central bank services are also excluded.

28) Employment and occupation are key elements in guaranteeing equal opportunities for all and promote social integration. In this context, sheltered workshops and sheltered employment programs contribute much support the integration or reintegration of people with disabilities in the labor market. However, it is possible that such workshops might not contracts under normal conditions of competition. It is therefore appropriate to provide that

Member States may reserve the right to participate in the tender for public contracts to such workshops or reserve performance of contracts to the context of sheltered employment.

29) The technical specifications as public entities present, should allow for the opening up to competition in public procurement. Therefore, it should be possible to submit tenders which reflect the diversity of technical solutions. It should be possible to draw up the technical specifications in terms of performance and utilization and contracting shall, when referring to European standards or, when they do not exist, national standards, tenders based on equivalent arrangements. Allow the bidders to submit any evidence to show that tenders are equivalent. Contracting authorities must be able to justify any decision that has not been equivalent exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and / or specific environmental effects of product groups or services. They may use, but are not obliged to use appropriate specifications that are defined in eco-labels such as the European Eco-label, (multi-) national eco-labels or any other eco-provided that the requirements for the logo to be presented and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organizations can participate, and providing the label is accessible and available to all interested parties. The contracting authority shall, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. Technical specifications should be clearly indicated so that all tenderers know what the requirements established by the contracting authorities.

30) Additional information concerning contracts must, as is customary in Member States, provided in the contract documents for each contract or in an equivalent document.

31) It may be impossible for the contracting work for very complex tasks, without that they have made some mistakes, identifying ways to meet their needs or assess what is available in the market for technical and / or financial and legal solutions . This situation may arise in particular in the implementation of important integrated projects in the field of transport infrastructure, large computer networks or projects involving complex and structured financing as it is not possible to define the next financial and legal situation in advance. If you can not make such agreements public or restricted tender contracts shall provide for flexible auction process that ensures both competition between operators and is also to meet the need for contracting discuss all aspects of the contract with each participant. This procedure must not be used in such a way as to restrict or distort competition, particularly by altering any fundamental aspects of the offers, or by imposing substantial new requirements on the tenderer will be chosen, or by selecting any tenderer other than the as the most economically advantageous.

32) It is appropriate to make provision for subcontracting to help SMEs participate in public procurement.

33) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may in particular be for the purpose of promoting vocational training, the employment of people experiencing particular difficulty in getting to the market, the fight against unemployment or the environment. For example, the requirements applicable during performance of the contract, to hire applicants who have been long unemployed or take steps to train unemployed or young persons, to comply in substance with the provisions of the basic International Labor Organization (ILO), provided that such provisions have not been implemented in national law, and to recruit more handicapped persons than those provided for in the regulations.

34) The laws, regulations and collective agreements, at both national and Community level

in the field of employment conditions and safety at work apply during the performance of a public contract, provided that such rules, and their application in accordance with Community law. Regarding activities, which stretches across the border, where workers from one Member State provide services in another Member State in connection with the execution of a contract lays down minimum requirements, the host country must be respected in connection with such posting of workers in the European directive 96 / 71 / EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services (¹¹). If the provisions of this national law can be regarded as serious misconduct or unethical conduct on the part of the operator if the provisions are not respected and may lead to his exclusion from the contract award of a public contract.

35) In the light of new developments in information and communication technology and its potential to simplify the publication of contracts and increase the efficiency and transparency of procurement processes, electronic means should be put on a par with traditional means of communication and information exchange. The means and technology chosen is that it must be, as far as possible, be compatible with the technologies used in other Member States.

36) To ensure development of effective competition in the field of public contracts is necessary to contract notice the contracting authorities of Member States be displayed throughout the Community. The information contained in these notices must enable economic operators in the Community to determine whether they are interested in the proposed agreements. It is necessary to give them adequate information on the subject of the contract and the conditions attached thereto. It shall ensure that appropriate public announcements will be visible, for example, by using standard contract notice forms and the Common Procurement Vocabulary (CPV) provided for in Regulation (EC) No. 2195/2002 (¹²) as the reference nomenclature for public contracts. In restricted procedures, advertisement is mainly intended to enable contractors of Member States to express their interest in contracts by seeking the contracting authorities invitations to tender under the required conditions.

37) Directive 1999/93 / EC of 13 December 1999 on a Community framework for electronic signatures (¹³) and Directive 2000/31 / EC of 8 June 2000 on certain legal aspects of services, in particular electronic commerce, in connection with the internal market ('Directive on electronic commerce') (¹⁴) shall, in the context of this Directive, apply to the transmission of information by electronic means. The procurement rules and the rules applicable to service contests require a level of security and confidentiality higher than those Directives. Accordingly, the devices for the electronic receipt of offers, requests to participate and plans and projects should comply with specific additional requirements. For this reason, the encouragement of the use of electronic signatures, in particular advanced electronic signatures, as far as possible. In addition, voluntary accreditation schemes could constitute a favorable framework for enhancing the level of certification service for this equipment.

38) The use of electronic means saves time. Therefore, provision should be made for reducing the minimum periods where electronic means are used, subject to the condition that they comply with the specific mode of transmission envisaged at Community.

39) Verification of the suitability of bidders in public tenders and candidates in the restricted and negotiated procedures with publication of the notice and the competitive dialogue and the selection of bidders and candidates shall be carried out in transparent conditions. Therefore shall specify the criteria of non-discrimination contracting authorities may use when selecting competitors and the means operators can use to prove they have satisfied those criteria. For reasons of transparency should also require the contracting authority, as soon as the contract is put out, the selection criteria it will use and the specific skills that may or may not require the operators so that they can participate in the auction.

40) A contracting authority may limit the number of candidates in the restricted and

negotiated procedures with publication of a contract notice and in the competitive dialogue. Such a reduction of candidates should be based on objective criteria specified in the contract notice. These objective criteria do not necessarily imply weightings. In the case of criteria relating to the personal situation of economic operators may be sufficient in the contract notice a general reference to the matters referred to in Article 45.

41) In the competitive dialogue and negotiated procedure with publication of a contract notice, contracting authorities shall, in view of the flexibility which may be required and the high costs associated with such methods of procurement, are authorized to make purchases take place in several stages in order gradually to reduce, on the basis of previously indicated contract award criteria, the number of tenders which they will go on to discuss or negotiate. This reduction should, insofar as the number of appropriate solutions or candidates allows, ensure genuine competition.

42) The relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in a procurement procedure or a design contest.

43) Avoid making official agreements with operators who have participated in a criminal organization or have been found guilty of corruption or fraud to the detriment of the financial interests of the European Communities, or found guilty of money laundering.

) Of equal treatment of workers, and it has been confirmed by final judgment or a decision having equivalent effect may be considered an offense concerning the professional conduct of the economic operator concerned or grave misconduct.

44) In cases where the work or service is such that it justifies the measures or environmental management systems during the execution of a public contract can require that such measures or schemes. Environmental control systems, whether they are registered under Community instruments such as Regulation (EC) No. 761/2001 (¹⁷) (EMAS), can demonstrate that the operator has the technical capability to perform the contract. In addition, the adopted description of the measures, the operator performs to ensure the same level of environmental protection, as proof that replaces the registered environmental management systems.

45) This Directive allows Member States to establish official lists of contractors, suppliers and service providers or certification by public or private and include provision for the effects of such registration or certification of the contract award procedure in another Member State. For the purposes of official lists of approved economic operators, it is important to take into account the case-law in cases where an economic operator belonging to a group claims the economic, financial or technical capabilities of other companies in the group in support of its application for registration. In this case the operator to prove that he actually access these resources throughout the term of registration. With this listing Member State may therefore determine the requirements to be met and in particular, where the operator lays example, financial another company in the group, it may require that that company be held responsible, if necessary, one for all and all for one.

46) Contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. It is therefore appropriate to allow the application of two award criteria only: "the lowest price" and "the most economically advantageous offer".

To ensure compliance with the principle of equal treatment in the award of contracts shall lay down an obligation - established by case law - to ensure the necessary transparency so as to provide all bidders reasonably informed of the criteria and mechanism for evaluating the the most economically advantageous tender. It is the responsibility of contracting authorities to indicate the criteria for the award of the contract and the relative weighting of each of

those criteria in sufficient time for tenderers to be aware of them when preparing their tenders. Contracting authorities may derogate from indicating the weighting of the criteria for the award in duly justified cases for which they must be able to justify, and it is not possible to assess the weight in advance, particularly in the case of complex contracts. In such cases, they must indicate the priority importance of the criteria.

If the contracting authorities choose to award a contract to which the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money. With this in mind, they shall determine the economic and quality criteria which must make it possible to determine the most economically advantageous tender for the contracting authorities, on the whole. The determination of these criteria depends on the subject of the agreement that the basis to be able to assess the implementation inherent in each offer in light of the object of the contract, as defined in the technical specifications, and also to determine the ratio between quality and price in each tenderer.

To ensure equal treatment, the criteria for the award be such that it can be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, make the contracting authority to meet the needs of the public concerned, as stated in the contract. Under the same conditions, a contracting authority may use criteria, mainly to cater to the needs defined in terms of the contract, which must meet social requirements particularly disadvantaged groups of people as recipients or using the works, supplies or services, the object of the contract, belong.

47) In the case of public service contracts, the award criteria must not affect the application of national provisions on the remuneration of certain services, such as services provided by architects, engineers or lawyers and, where public supply contracts are concerned, the application of national provisions setting out fixed prices for school books .

48) Certain technical conditions, in particular with regard to reporting and statistical reports, as well as the nomenclature used and the conditions of reference to that nomenclature, and turn them into the light of changing technical requirements. Also need to update the list of contracting authorities in the Annexes. It is therefore appropriate to put in place a flexible and rapid adoption procedure for this purpose.

49) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468 / EC of 28 June 1999 laying down the procedures of implementing powers conferred on the (¹⁸).

50) Council Regulation (EEC, Euratom). 1182/71 of 3 June 1971 laying down to periods, dates and time limits (¹⁹) should apply to the calculation of the time limits contained in this Directive.

51) This Directive does not affect the obligations of Member States as regards the time limits set in the XI. Annex to transpose and apply Directives 92/50 / EEC, 93/36 / EEC and 93/37 / EEC.

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I. Title. Definitions and principles

■ Article 1. Definitions

□ 1. In this Directive, the definitions set out in paragraphs 2 to 15. paragraph.

□2. a) "public contracts" are written contracts for pecuniary interest, one or more economic operators and one or more contracting with each other and works contracts, or services within the meaning of this Directive,

b) "Public works contracts" are public contracts dealing either the execution or both the design and execution of works related to one of the activities referred to in Annex I or work or any work practice that responds to the demands of the contracting authority sets out. "Works" is the overall outcome of building or civil engineering works that can, as such, to fulfill an economic or technical function

c) "Public supply contracts" are public contracts other than those referred to in paragraph, for the purchase, rental or hire purchase of products, with or without an option.

A public contract deliveries, which also includes incidental matter, siting and installation operations shall be deemed a "public supply contract",

d) "Public service contracts": public contracts other than public works or supply contracts relating to the provision of the services referred to in Part II . Annex.

A public contract relating to both products and services within the meaning II. I shall be deemed a "public service" if the value of the services exceeds that of the goods covered by the agreement.

A public contract relating to services pursuant to. II. I and including activities under. Annex I, which is only incidental to the principal subject of the contract shall be considered a public service.

□3. "Public works concession" contract of the same type as a public works contract except that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment.

□4. "service concessions" contract of the same type as a public service, except that the consideration for the services to be provided consists either solely in the right to exploit the service or in this right together with payment.

□5. "framework" agreement between one or more contracting authorities and one or more operators who are prepared for the purpose of determining the terms of contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

□6. A "dynamic purchasing system" is a completely electronic process for making commonly used purchases, the characteristics of which are generally available in the market and meet the requirements of the contracting authority, which is temporary and open throughout its validity to all operators who meet the selection criteria and have submitted tenders in accordance with its terms.

□7. "electronic auction" is a repetitive process where new, lower prices and / or new values concerning certain elements of tenders are presented electronically, starting after the full evaluation of the tenders at the beginning and makes it possible to classify with automated techniques.

As a result, do not hold an electronic auction in the case of certain service contracts and contracts involving the implementation of intellectual property, such as design work.

□8. The terms "contractor", "supplier" and "service" means any natural or legal person or public entity or group of such persons and / or organizations that offer execution of works and / or works, goods and services on the market.

The term "operator" is used equally to contractors, suppliers and service providers. It is used only for simplicity.

The operator, which has submitted a bid, called the "bidder". Anyone who has sought an invitation to take part in a restricted or negotiated procedure or competitive dialogue 'candidate. "

□9. "Contracting authorities": State, regional or local authorities, bodies governed by public law, associations formed by one or more such authorities or one or more bodies governed by public law.

"Bodies governed by public law," the organization:

- a) that established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
- b) having legal personality and
- c) financed mostly part of the State, regional or local authorities, or other bodies governed by public law, or institutions where activities are under the supervision of such agencies, or agency has administrative, management or supervisory body where the majority of the members are appointed by national, regional - or local authorities or other bodies governed by public law.

III. I can find files, but not exhaustive list of bodies and categories of bodies governed by public law which fulfill the criteria referred to in A, B and C of the second subparagraph. Member States shall notify the Commission periodically of any changes to their lists of bodies and categories of bodies.

□10. "central purchasing body" contracting authority which:

- acquires supplies and / or services intended for contracting authorities or
- awards public contracts or framework agreements for works, supplies or services intended for contracting.

□11. a) "Open" process in which all operators, who are interested, may make an offer.

b) "Restricted procedures": a process in which any economic operator may request to participate and only those operators, the contracting authority offers participation, may submit a tender.

c) "Competitive dialogue" is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, imposed are the basis of the candidates chosen are invited to tender.

Regarding the use of the process, as mentioned in the first subparagraph, a public contract is to be "particularly complex" where the contracting authorities:

- are not objectively able to define the technical means in accordance with b, c or d of paragraph 3. Article 23. that can fulfill their needs or objectives, and / or
- are not objectively able to specify the legal and / or financial framework for the project.

d) "negotiated" procedures whereby the contracting consult with operators of their choice and negotiate a contract with one or more of them.

e) "Design contests" are those procedures which enable the contracting authority to acquire a plan or design, particularly in the fields of town and country planning, architecture and engineering or data processing, selected by a jury after having been put out to competition with or without prizes.

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

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

□14. "Common Procurement Vocabulary (CPV)": the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No. 2195/2002, while ensuring equivalence with the other existing nomenclatures.

The event of varying interpretations of the scope of this Directive, owing to possible

differences between the CPV and NACE (NACE EC), as set out in Annex I, or between the CPV and CPC (Central Product Classification of the United Nations) (provisional version) nomenclatures in II. I, the NACE or the CPC system a priority.

15. In Article 13., Paragraph 57 of. and b Article 68. For the purposes as follows:

a) "public communications network 'infrastructure public radio that allows you to transfer signals between defined network termination points by wire, microwave, optical or other electromagnetic means,

b) " network termination point "all physical connections and their technical access to those who are part of the public telecommunications network and are necessary for access and effective communications on the network,

c) "public telecommunications services" that in particular, to one or more telecommunications entities

d) 'telecommunications' services in whole or degree inherent in the transmission and routing of signals on the public telecommunications network by means of telecommunications means other than radio or television.

■ **Article 2. Principles of awarding**

Operators should be given equal treatment, non-discriminatory and transparent manner, the contracting authority.

■ **Article 3. Granting of special or exclusive rights: provisions prohibiting discrimination**

if the contracting authority gives the other party the contracting authority special or exclusive rights to provide public services should be provided for in the Act that such right is based on the person complies with the principle of non discrimination on grounds of nationality when he enters into an agreement with a third party in connection with the services.

II. Title. Rules on public contracts

CHAPTER I. General provisions

■ **Article 4. Operators**

1. Candidates or tenderers who are entitled to provide the relevant services under the laws of the Member State where they are established, for the sole reason that required by the law of the Member State in which the contract is made to candidates or tenderers to be either natural or legal persons.

If the case of public service and public works contracts and public supply contracts covering in addition services and / or siting and installation operations, can require that legal entities indicate in the tender or to participate, the names and professional qualifications of the staff to responsible for the implementation of the agreement.

2. Groups of economic operators may submit tenders or participation. Contracting authorities may not require these groups to take a specific legal form to submit a tender or request to participate but can require the group, which has been selected and made the contract, assume a specific legal form if it is necessary to be able to perform the contract satisfactorily.

■ **Article 5. Conditions relating to agreements concluded within the WTO**

when contracting choose from bids Member States shall apply the conditions of each other that are as favorable to the conditions imposed by operators of third countries in the implementation of the Agreement on Government Procurement (hereinafter referred to as the Agreement ') concluded in the Uruguay Round multilateral negotiations. To this end, Member States shall consult each other within the Advisory Committee for Public Contracts referred to in Article 77., On the measures to be taken pursuant to the Agreement.

■ **Article 6. Confidentiality**

Subject to the provisions of this Directive, in particular those concerning the obligations

relating to the tender and information to candidates and tenderers set out in paragraph 4. Article 35. and Article 41., and in accordance with the national contracting authority is subject, 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 last elements of which are confidential.

II. Chapter. Scope

Section 1. thresholds

■ Article 7. *Thresholds for public contracts*

This Directive applies to public contracts not covered by the derogation provided for in Articles 10 and 11. and 12 to 18. Article., and where the estimated value net of VAT is equal to or exceeds the following thresholds:

a) 162,000 euros in the case of public supply and service contracts, other than those covered by the third indent of awarded by the contracting authorities are listed as central government authorities in Annex IV. I, but in the case of public supply contracts awarded by contracting authorities operating in the field of defense, this shall apply only to contracts for products covered by Annex V,

b) 249,000 euros

- in the case of public supply and service contracts awarded by contracting authorities other than those listed in Annex IV. Annex,

- in the case of public supply contracts awarded by contracting authorities which are listed in Annex IV. Annex and operating in the field of defense, where these contracts for products not listed in Annex V,

- in the case of public service contracts awarded by the contracting authority concerning the services listed in category 8 of Annex II. Annex A, Category 5 telecommunications services, with a corresponding position in the CPV and the CPC reference numbers 7524, 7525 and 7526, and / or services specified in II. Annex B,

c) 6,242,000 euros in the case of public works contracts.

■ Article 8. *Contracts subsidized by more than 50%*

Directive shall apply for the award:

a) contracts which are subsidized directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is 6,242,000 euros or more

- if construction within the meaning of Annex I to this agreement,

- where those contracts involve building work for hospitals, sports and leisure facilities, schools and universities, and public buildings,

b) service contracts which are subsidized directly by contracting authorities by more than 50% planned the value of VAT is 249,000 euros or more and related contract within the meaning of paragraph.

Member States shall take all measures necessary to ensure that contracting authorities subsidize such agreements, to ensure compliance with the provisions of this Directive one or more other parties make an agreement and contracting compliance also self with this Directive if they enter into a contract on behalf of another person .

■ Article 9. *Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems*

1. The calculation of the estimated value of a contract shall be based on the total amount of the contracting authority estimates payable, excluding VAT. This calculation shall take into account the estimated total amount, including any form of option and any renewals of the contract.

When the contracting authority for prizes or payments to candidates or tenderers shall be taken into account when calculating the estimated contract value.

2. This program shall be in force at the time the contract notice is sent, as provided for in paragraph 2. Article 35., Or, in cases where such notice is not required, at the time when the contracting authority has the tender process.

3. No change project or proposed purchase of a certain quantity of supplies and / or services in order to avoid the application of this Directive.

4. With regard to public works contracts, the calculation of the estimated value, taking into account both the cost of the works and the total estimated value of the supplies necessary to perform the work and the contracting contractor for disposal.

5. a) When can replace a proposed work or purchase of services into separate lots, which are made at the same time, take into account the total estimated value of all such lots. If the aggregate value of which is equal to or exceeds the threshold laid down in Article 7., Or more, this Directive should apply to the awarding of each lot.

Contracting authorities may, however, waive such application in the estimated value of which net of VAT, is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate value of those lots does not exceed 20% of the aggregate value of the lots.

b) When you can change the bid for the purchase of similar foods in separate lots, which are made at the same time, account should be taken of the total estimated value of all such lots when applying A and B of Article 7.

If the aggregate value of which is equal to or exceeds the threshold laid down in Article 7., Or more, this Directive should apply to the awarding of each lot.

However, contracting authorities may waive such application in the estimated value of which net of VAT, is less than 80,000 euros, provided that the aggregate value of those lots does not exceed 20% of the aggregate value of the lots.

6. With regard to public supply contracts relating to the rental or lease of goods shall provide the following value as a basis for the estimated contract value is calculated:

a) in the case of fixed-term contracts, the total estimated value of public contracts, valid for 12 months or less, or, if the contract is greater than 12 months, the total value including the estimated value of the balance,

b) the value of each month, multiplied by 48, with regard to the term of the contracts or agreements can not determine precisely.

7. In the case of public service or supply contracts, which are made on a regular basis or to be renewed within a given period, the following criteria the estimated contract value is calculated:

a) either the total actual value of identical contracts, have been awarded during the last 12 months or financial year adjusted, if possible, with respect to changes in quantity or value which would occur 12 months after the initial contract,

b) or the total estimated value of the successive contracts awarded 12 months after the first delivery, or during the financial year if that is longer than 12 months.

Do not choose the method of calculation of the estimated value of a contract for the purpose of the contract will be excluded from the scope of this Directive.

8. Regarding the public service shall provide the following value as a basis for the estimated contract value is calculated:

a) for services in the following areas:

i) insurance services: paid premiums and other payments,

ii) banking and other financial services, fees, commissions, interest and other payments,

iii) design contracts: fees, commissions and other payments,

b) for service contracts where a total price:

i) if that term is equal to 48 months or less, the total contract value for the time,

ii) in the case of fixed-term contracts or contracts exceeding 48 months, the value of each month multiplied by 48.

☐9. with regard to framework agreements and dynamic purchasing value, as compared to, a maximum estimated value of all contracts, excluding VAT, which it is intended to make the Invalidate IMA framework agreement or dynamic purchasing system.

Section 2. Special conditions

■ [10. Article. *Contracts in the fields of defense and security*

☐ Subject to [123. Article. EEA, cf. EEA Joint Committee No. 68/2006], this Directive shall apply to public contracts awarded in the fields of defense and security, with the exception of contracts Directive 2009/81 / EC of 13 July 2009 on the coordination of procedures for the award of the contracting authority or contracting entities in certain works contracts and service in the field of defense and security applies.

☐ This Directive shall not apply to contracts Directive 2009/81 / EC applies under. 8, 12 and 13. respectively.] ¹⁾

¹⁾ Appendix II, cf. [L. 65/2014, Article 4.](#)

■ Article 11. *Public contracts and framework agreements awarded by central purchasing bodies*

☐ 1. Member States may stipulate that contracting authorities may purchase works, supplies and / or services from a central purchasing or through her.

☐ 2. Contracting authorities which purchase works, supplies and / or services from a central purchasing or intermediary in the cases referred to in paragraph 10. Article 1. Shall be deemed to have complied with this Directive insofar as the central purchasing body has complied with it.

Section 3. Contracts not covered by the Directive

■ Article 12. *Contracts in the water, energy, transport and postal services sectors*

☐ This Directive shall not apply to public contracts awarded pursuant to Directive 2004/17 / EC of the contracting authorities which operate one or more of the activities referred to in Articles 3 to 7. Article. that Directive, and awarded for their business activities, and not to public contracts are excluded from the scope of the Directive under. Article 5. (Second paragraph.) And 19, 26 and 30 thereof. her.

This Directive shall continue to apply to public contracts awarded by contracting authorities carrying out one or more of the activities referred to in Article 6. Directive 2004/17 / EC and awarded for those activities, provided that the Member State concerned of the option, referred to in the second subparagraph of Article 71. Directive to defer its application.

■ Article 13. *Exceptions in the telecommunications sector*

☐ , this Directive shall not apply to public contracts for the principal purpose of permitting the contracting authorities to provide public telecommunications networks or exploit or provide to the public one or more telecommunications services.

■ Article 14. *Secret contracts and contracts requiring special security measures*

☐ This Directive shall not apply to public contracts declared to be secret, when applied will be special security implementation in accordance with applicable laws, regulations and administrative provisions of the Member States concerned or when required to protect the essential interests in that Member State.

■ Article 15. *Contracts awarded pursuant to international rules*

☐ This Directive shall not apply to public contracts governed by different procedural rules and awarded:

a) on the basis of an international agreement between a Member State and one or more third countries, drawn up in accordance with the Treaty and covering supplies or works , proposed that the signing countries of the joint implementation or exploitation of the work or service which is planned signing countries of the joint implementation or exploitation of a

project; Report any agreements to the Commission, which may consult the Advisory Committee for Public Contracts referred to in Article 77.,

b) on the basis of an international agreement relating to the stationing of troops and concerning the undertakings of a Member State or third country,

c) on the basis of the particular procedure of an international organization.

■ **Article 16.** *Specific exclusions*

□ This Directive shall not apply to public service contracts:

a) the purchase or lease of land, buildings or other real estate, regardless of financial means, or rights thereon; This Directive applies to contracts for financial services, in any form, which are made for, or after the contract of acquisition or rental,

b) the acquisition, development, production or co-production broadcasters of Broadcasting Programs nor the agreements concerning transmission time,

c) arbitration and conciliation services,

d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, particularly in the case of transactions by the contracting authorities to raise money or capital and central bank services,

e) employment and

f) research and development services other than those exclusively for the benefit of the contracting authority in its own affairs, on condition that the service, which provided is wholly remunerated by the contracting authority.

■ **Article 17.** *Service concessions*

□ This Directive shall not apply to service concessions under. 4th paragraph. Article 1. Cf.. However, Article 3.

■ **Article 18.** *Service contracts awarded on the basis of an exclusive right*

□ This Directive shall not apply to public service contracting authority makes another contracting authority or to an association of contracting authorities on the basis of an exclusive right that such persons have by law or regulation that have been published and are compatible with the Treaty.

Section 4. Special arrangements.

■ **Article 19.** *Contracts tied to specific groups of*

□ Member States may reserve the right to take part in a public tender to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programs where most of the employees are disabled persons who, because of the nature or the seriousness of their disabilities, can not carry on occupations under normal conditions.

Refer to this provision in the contract notice.

III. Chapter. Rules on public service

■ **Article 20.** *Service contracts listed in Annex II. Annex A*

□ Contracts which aims to provide services specified in Annex II. Appendix A, shall be made in accordance with Articles 23 to 55. Article.

■ **Article 21.** *Service contracts listed in Annex II. Annex B*

□ Contracts which aims to provide services specified in Annex II. Annex B shall only be subject to Article 23. and 4. Article 35.

■ **Article 22.** *Mixed service contracts for both services listed in Annex II. Annexes A and II. Annex B*

□ Agreements relating to both services listed in Annex II. Annexes A and II. Annex B shall be made in accordance with. 23.-55. Article. when the value of the services listed in Annex II. Annex A is more than the value of the services listed in Annex II. Annex B. In other cases, the agreements concluded under. Article 23. and 4. Article 35.

IV. Chapter. Specific rules governing specifications and contract documents

■ Article 23. Technical specifications

□1. The technical specifications as defined in the first paragraph VI. shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. When possible, identify these technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users.

□2. Technical specifications shall afford equal access for tenderers and shall not include the effect of creating unjustified obstacles to public procurement to be opened to competition.

□3. Without prejudice to mandatory national technical rules, so long as they are compatible with Community law, the technical specifications set out in the following ways:

a) by reference to technical specifications defined in Annex VI. I, and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems, the European standardization bodies have established, or, when these do not exist, to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of works and use of the product. The words "or equivalent" must accompany each reference,

b) or in terms of performance or functional requirements; the latter may include environmental characteristics. These parameters must be sufficiently precise to allow tenderers to make the subject-matter of the contract and the contracting authorities to award the contract;

c) or in terms of performance or functional requirements, as referred to in paragraph, and refer to the specifications referred to in paragraph to show that presuming conformity with such performance or functional requirements,

d) or by referring to the specifications referred to in paragraph for certain characteristics, and of performance or functional requirements referred to in Article point for other characteristics.

□4. Where a contracting authority uses the option of referring to the specifications referred to in paragraph 3., It can not reject a tender on the grounds that the products and services that are offered do not comply with the specifications, it referred, once the tenderer proves in his tender, by any appropriate means to the satisfaction of the contracting authority, that the solutions 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 recognized body.

□5. Where a contracting authority uses the option provided for in paragraph 3., To lay down requirements for performance or functional requirements, it may not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, European technical approval, a common technical specification, an international standard or a technical reference system by a European standardization body established if these specifications address the performance or functional requirements which it has laid down.

In his bid bidder must prove by any appropriate means to the satisfaction of the contracting authority, that the work, product or service that is in accordance with the standard meets the requirements of the contracting authority performance or functional.

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

□6. Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements, as referred to in sub-paragraph 3. They may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-)

national eco-labels or any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the goods or services covered by the contract,
- the requirements for the label, based on scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organizations can participate, and
- the eco-labels are accessible to all interested parties.

Contracting authorities 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 relevant evidence, such as technical documentation from the manufacturer or a test report from a recognized body.

7. "Recognized bodies" within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards.

Contracting authorities shall accept certificates from recognized bodies established in other Member States.

8. Technical specifications shall not refer to a specific make or source specific production process nor to trade marks, patents, types or specific origin or production with the effect of favoring or eliminating certain undertakings or certain products no justification for the content of the agreement. In exceptional cases, such reference shall be permitted where a sufficiently precise and intelligible description of the subject of the contract under 3 and 4. is not possible; the words "or equivalent" shall be accompanied by such a reference.

■ **Article 24.** *Variants*

1. Where the criterion for award is economically advantageous tender contracting authorities may authorize tenderers to submit variants.

2. Contracting authorities shall indicate in the contract notice whether they authorize variants or not, failing which variants prohibited.

3. Contracting authorities authorizing variants shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.

4. The contracting authority shall only take account of variants that meet the required minimum.

In procedures for public supply or service contracts, contracting authorities which have authorized variants 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 a supply contract rather than a service.

■ **Article 25.** *Subcontractors*

Tender contracting authority may request, or requested by a Member State to ask the tenderer to indicate in his tender any share of the contract he intends to carry out the third party subcontractors and who they are.

This information shall not affect the liability of the operator of the contractor.

■ **Article 26.** *Conditions for performance of contracts*

Contracting authorities may lay down specific conditions for performance of the contract, provided that they comply with Community law and are indicated in the contract notice or in the specifications. Conditions for the implementation of a contract may relate in particular to social and environmental.

■ **Article 27.** *Obligations relating to taxes, environmental protection, employment and working conditions*

1. The contracting authority may specify in the contract documents, or be required by a

Member State, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions applicable the Member State, region or locality in which the works or provided and which are to apply to work carried out on site or to the services provided during the performance of the contract.

□2. The contracting authority which supplies the information referred to in paragraph 1. Shall request the tenderers or participants in the auction process to confirm they have, in their tender, obligations relating to employment protection provisions and working conditions applicable in site where the work will be carried out or the services provided.

The first subparagraph is subject to the application of Article 55. the examination of abnormally low tenders.

Section V. Procedures

■ **Article 28.** *Use of open, restricted, negotiated and competitive dialogue*

□ In awarding their public contracts, contracting authorities shall apply the national procedures adjusted for the purposes of this Directive.

They shall award these contracts based on open or restricted procedure. Under certain circumstances expressly provided for in Article 29., May award their public contracts in the competitive dialogue. In the specific cases and the circumstances specifically mentioned in Articles 30 and 31. they may apply a negotiated with or without a contract notice.

■ **Article 29.** *Competitive dialogue*

□ 1. If the case of particularly complex contracts, Member States may provide that contracting authorities may, if they consider that it is not possible to conclude an agreement on the basis of an open or restricted procedure, making use of the competitive dialogue in accordance with this article.

A public contract shall be made solely on the basis of the award criterion for the most economically advantageous bid.

□2. The contracting authority shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and / or in the descriptive document.

□3. The contracting authority shall initiate discussions with participants, selected in accordance with the relevant provisions of Articles 44 to 52. Article., with the aim to identify and define the means best suited to meet their needs. In these discussions, they may discuss all aspects of the contract with the chosen candidates.

During the negotiations, contracting authorities shall ensure that all bidders receive equal treatment. In particular, they shall not provide information in a way that bidders discrimination so that the position of some of them will be better than others.

Contracting authorities may inform other participants solutions proposed or other confidential information, as a participant in the dialogue without his consent.

□4. Contracting authorities may provide for the procedure to take place in several stages to reduce the number of solutions to be discussed in the negotiations; it can be done on the basis of the award criteria in the contract notice or the descriptive document. It should be noted, in the contract notice or the descriptive document, to be able to take advantage of this option.

□5. The contracting authority shall continue such dialogue until it can identify the solution or solutions that can fulfill their needs and solutions have been compared, if necessary.

□6. Having declared that the dialogue is concluded and informed the participants about what they shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the implementation of the project.

These deals can be explained, identify and correct if the contracting authority so requests. Such clarification, specification, fine-tuning or additional information may not

involve changes to the basic offer or invitation to submit tenders variations in which are likely to distort competition or have a discriminatory effect.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with Article 53.

The contracting authority may request the tenderer which has submitted the most economically advantageous bid, clarifying certain points of the offer or confirm commitments contained in the offer, provided that this does not result in a change in any material way in the offer or invitation the bid and there is no risk that it distorts competition or discriminatory.

8. The contracting authorities may specify prices or payments to participants in the negotiations.

■ **Article 30.** *Negotiated procedure with publication of the notice*

1. Contracting authorities may award public contracts by the negotiated procedure with publication of a contract notice in the following cases:

a) in the case of insufficient offer, submitted in the context of open or restricted procedures or competitive dialogue or offers that are unacceptable under national provisions compatible with Articles 4, 24, 25, 27. and VII. section, provided that the original terms of the contract are not substantially amended.

Contracting authorities need not publish a contract notice if they include in the negotiated procedure all bidders, and no other, that meet the criteria 45.-52. Article. and that made the offer in accordance with the formal requirements of the bidding process in the preceding open or restricted procedure or competitive dialogue,

b) in exceptional cases, when works, products or services of the kind or accompanied by such a risk that is not possible to estimate the total cost in advance,

c) in the case of services, including services in category 6 II. Annex A and intellectual property, such as design work, if the service to be provided is such that it is not possible to define the specifications of sufficient accuracy to be able to conclude an agreement on the basis of the best bid in accordance with the rules governing open or restricted procedures,

d) in the case of public works contracts, for works which are performed solely for purposes of research, testing or development and not for personal gain or to offset the cost of research and development.

2. In the cases referred to in paragraph 1. Contracting authorities shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements of the contracting authority set out in the contract notice, the specifications and additional documents, if any , and to seek out the best tender in accordance with paragraph 1. Article 53.

3. During the negotiations, contracting authorities shall ensure equal treatment of all tenderers. In particular, they shall not provide information in a way that bidders discrimination so that the position of some of them will be better than others.

4. Contracting authorities may provide for the procedure to take place in several stages to reduce the number of tenders to be negotiated, by applying the award criteria in the contract notice or in the specifications. It should be stated in the contract notice or in the specifications whether it is possible to make use of this option.

■ **Article 31.** *Negotiated without prior publication of a contract notice*

Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

1) in respect of public works contracts, public supply contracts and public service contracts:

a) when no tenders or no tenders or no applications have been submitted open or restricted

procedure, provided that you have not deviated from the original contract are materially and to the Commission a report is sent, if it so requests,

b) when only possible to make an agreement with a particular economic operator for technical or artistic reasons or the protection of exclusive rights,

c) if it is absolutely necessary and can not, for compelling reasons which the contracting authorities could not foresee, the time limit for the open or restricted procedures or negotiated the exchange publication of a contract notice as referred to in Article 30. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority,

2) with respect to public contracts:

a) in the case of products manufactured purely for the purpose of research, experimentation, study or development; This provision does not extend to quantity production to establish commercial viability or to offset the cost of research and development,

b) in the case of additional products by the original supplier which are intended either as a partial instead of normal supplies or equipment or additional normal supplies or equipment and a change of supplier would oblige the contracting authority to buy the materials had other technical characteristics thus resulting in incompatibility or disproportionate technical difficulties in operation and maintenance; such agreements, as well as recurrent contracts shall not normally exceed three years,

c) in the case of products quoted and purchased on a commodity market,

d) in the case of purchases of goods under particularly advantageous conditions, either a supplier to cease operations or manager or trustee of a bankruptcy, or a similar procedure under national laws or regulations,

3) in respect of public service contracts, when the contract is awarded after a design contest and must, under the current rules, to negotiate with the winner or one of the successful candidates, in the latter case, to invite all the winners to participate in the negotiations,

4) in respect of public works contracts and public service contracts:

a) in the case of additional work or - services that were not anticipated in the project was the beginning made net or in the original contract but which have, through unforeseen circumstances, become necessary for the execution of works or services described therein, provided that the award is made to the economic operator performing such works or services:

- when it is not possible to separate such additional works or services from the initial contract technically or economically without causing great inconvenience contracting authorities,

or

- when such works or services are absolutely necessary for the execution of the original contract, although it is possible to separate the work or services from him.

The aggregate value of contracts awarded for additional works or services may not exceed 50% of the original contract,

b) in the case of new works or services involving the repetition of similar works or services and the same contracting authority awarded an original by the same operator, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure.

Once the first project is put up for tender should be noted that this procedure might be adopted and the contracting authorities shall take into account the total estimated cost of subsequent works or services when they apply the provisions of Article 7.

This method can be used only within three years of the award of the original contract.

■ **Article 32.** *Framework agreements*

1. Member States may provide that contracting authorities may conclude framework agreements.

2. Where a contracting authority intends to conclude a framework agreement shall follow the rules referred to in this Directive for all phases up to the award of contracts based on that framework agreement. Selecting the parties to the framework agreement shall apply selection criteria are determined in accordance with Article 53.

Contracts, which are based on a framework agreement shall be made in accordance with the procedures laid down in paragraphs 3 and 4. Only can apply these techniques in contracts between contracting authorities and operators that were originally party to the framework agreement.

When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in the framework agreement, in particular in the cases referred to in paragraph 3.

Duration of the framework agreement may not exceed four years except in exceptional circumstances, in particular by the current status of the content of the framework agreement.

Contracting authorities may not misuse framework agreements or use them in such a way as to prevent, restrict or distort competition.

3. If a framework agreement is concluded with a single economic operator, contracts based on that agreement, concluded within the framework of the terms laid down in the framework agreement.

When such contracts, contracting authorities may consult in writing the operator of the framework agreement, requesting it to supplement its tender if necessary.

4. If a framework agreement is concluded with several economic operators, they must be at least three in number, provided that the availability of a sufficient number of operators who meet the selection criteria and / or sufficient admissible tender.

Contracts based on a framework agreement with several economic operators may be either:

- the terms laid down in the framework agreement, without reopening the bid is submitted or

- if they have not been provided for of all the terms of the framework agreement, the parties are again in line with the same terms, which shall be explained in more detail if it is necessary, and, where appropriate, other terms referred to in the specifications of the framework agreement in accordance with the following rules:

a) for every contract the contracting authorities shall consult in writing the economic operators capable of performing the contract,

b) contracting authorities shall fix a time limit which is sufficiently long to allow bidders to submit a tender for each specific contract, taking into account the complexity the contract, how long it takes to tender and Other such factors,

c) they must be submitted in writing and their content shall remain confidential until the stipulated time limit for reply has expired,

d) contracting authorities shall award the contract to the tenderer which has submitted the best tender on the basis of the award criteria stated in the specifications framework agreement.

■ **Article 33.** *Dynamic purchasing systems*

1. Member States may provide that contracting authorities may use dynamic purchasing systems.

2. Where the contracting authorities to establish a dynamic purchasing system shall follow the rules of the open procedure in all its phases up to the conclusion of a contract under this system. All bidders who meet the selection criteria and have submitted tenders in accordance with the specification and any possible additional documents shall be admitted to the system; tenders may be improved at any time provided that they continue to comply with the

specifications. Once the system is established and award of contracts under the contracting authorities shall use solely electronic means in accordance with paragraphs 2 to 5. paragraph. Article 42.

□3. When a dynamic purchasing system is established, contracting authorities shall:

- a) publish a contract notice expressly stated that a dynamic purchasing system is involved,
- b) specify, among other things, the nature of the purchases envisaged under this procurement as well as the necessary information system, electronic equipment used and the technical arrangements and specifications for connection to the system,
- c) providing electronically, unrestricted, direct and full access to the specification and any additional documents from publication of the notice and until the time when the system is closed and shall specify in the notice, the address where you can access the data concerned.

□4. The contracting authority shall, throughout the period of access to the dynamic purchasing system is open, give all operators the option to submit a tender and of being admitted to the system under the conditions referred to in paragraph 2. They shall complete evaluation within 15 days of the promotion offer is submitted. They may extend, provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform the tenderer referred to in the first subparagraph as soon as possible, whether its admittance to the dynamic purchasing system or of its indicative rejected.

□5. Each specific contract shall be awarded to the tender. Before the auction, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender in accordance with paragraph 4. within a period of not less than 15 days from the date on which the simplified notice was sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that time.

□6. The contracting authority shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To this end they shall set a deadline for the submission of tenders.

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, announcing that a dynamic purchasing system has been established. These criteria can be defined more precisely, if applicable, the invitation referred to in the first subparagraph.

□7. A dynamic purchasing system may not last for more than four years, except in duly substantiated cases.

Contracting authorities may not use this system to prevent, restrict or distort competition.

Do not impose any fees on the relevant operators or to parties to the system.

■ **Article 34.** *Public works contracts: particular rules on subsidized housing*

□ In the case of public contracts relating to the design and construction of housing and necessary, because of the work is extensive, complicated and takes a long time, the projections are based from the outset on close cooperation group, comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the work, you can accept a special award procedure so as to select the contractor is likely to fall into the group.

In the contract notice, the contracting particular description of the works to be carried out, as accurately as possible to enable interested contractors to form a valid idea of the project. Furthermore, contracting authorities shall set out the personal, technical, economic and financial qualifications of the participants in the contract notice in accordance with the eligibility criteria for qualitative selection referred to in Articles 45 to 52. Article.

When this process is adopted authorities shall apply 2, 35, 36, 38, 39, 41, 42, 43 and 45 to 52. Article.

VI. Chapter. Rules on advertising and transparency

Section 1. publication of the notice

■ Article 35. Announcements

1. The contracting authority shall provide information on the following indicative notice published by the Commission or contracting themselves on their "buyer profile", as described in paragraph 2 of Annex VIII. Annex:

a) are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following 12 months where the total estimated value, taking into account the provisions of Articles 7 and 9., is 750,000 euros or more.

Contracting authorities product range with reference to the CPV system,

b) for services, the estimated total value of the contracts or the framework agreements for each service category, as listed in Annex II. Annex A, which they intend to award over the following 12 months, where the total estimated value, taking into account the provisions of Articles 7 and 9., is 750,000 euros or more,

c) where works are concerned, the main characteristics of the contract or framework agreement, which they intend to do, whose estimated value is equal to or exceeds the threshold specified in Article 7. or more, taking into account Article 9.

The notices referred to in A and B team, to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notices referred to in paragraph c, to the Commission or published on the buyer profile as soon as possible after the decision approving the planning of the proposed contracts or the framework of the contracting authority.

Contracting authorities who publish a prior information notice on a buyer profile, must send an electronic notice of the publication of the notice on a buyer profile in accordance with the format and the specific procedures for sending notices set out in paragraph 3 VIII. Annex.

Publication of the notices referred to in items a, b and c, is compulsory only where the contracting authorities take the option of shortening a time limit as laid down in paragraph 4. Article 38.

This paragraph shall not apply to negotiated procedures without prior publication of a contract notice.

2. Contracting authorities who wish to award a public contract or a framework agreement on the basis of a public tender, restricted or, under the conditions laid down in Article 30., According to the negotiated procedure with publication of a contract notice or the competitive dialogue under the conditions laid down in Article 29. shall make known their intention by means of a contract notice.

3. Contracting authorities who wish to establish a dynamic purchasing system shall make known their intention by means of a contract notice.

Contracting authorities who wish to award a contract based on a dynamic purchasing system shall make known their intention by simplified contract notice.

4. Contracting authorities which have awarded a public contract or a framework agreement shall send a notice of the results of the tender no later than 48 days after the award of the contract or framework agreement.

In the case of framework agreements concluded in accordance with Article 32., The contracting authorities are not bound to send a notice of the results of the tender for each contract based on that agreement.

Contracting authorities shall send a notice of the results of the tender, based on a dynamic purchasing system within 48 days after the results are known. They are authorized to collect such notices on a quarterly basis. In that case, they shall send the grouped notices within 48

days of the end of each quarter.

In the case of public contracts for services listed in Annex II. Annex B, the contracting authorities shall indicate in the notice whether they agree to its publication. For such services, the Commission shall adopt rules for establishing statistical reports on the basis of such notices and for the publication of such reports in accordance with the procedure laid down in paragraph 2. Article 77.

It is permissible to withhold certain information on a contract or framework agreement if the disclosure of such information would impede law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interests of public or private operators or fair competition between them.

■ **Article 36.** *Form and manner of publication of notices*

□ 1. Notices shall include the information set out in Annex VII. Annex A, and, where appropriate, any other information which the contracting authorities consider useful, in a standard format adopted by the Commission in accordance with the procedure referred to in paragraph 2. Article 77.

□ 2. Announcements by contracting authorities to the Commission shall be sent either by electronic means in accordance with the format and procedures for transmission indicated in point 3 VIII. I, or otherwise. In the case of the accelerated procedure referred to in paragraph 8. Article 38., Notices must be sent either by fax or by electronic means in accordance with the format and procedures for transmission indicated in point 3 VIII. Annex.

Notices shall be published in accordance with the technical characteristics for publication set out in Parts A and B of paragraph 1 VIII. Annex.

□ 3. Notices drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 VIII. 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 VIII. shall be published no later than 12 days after they are sent, or in the case of the accelerated procedure referred to in Article 8. Article 38. No later than five days after they are sent.

□ 4. Contract notices shall be published in full in an official language of the Community as a contracting authority shall select and only the text, which is published in this original language, a valid text. Publish the summary of the important elements of each notice other official languages.

The Community shall bear the costs of publication of such notices.

□ 5. It is prohibited to publish notices and their contents at the 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 a buyer profile in accordance with the first subparagraph of paragraph 1. Article 35. but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

Do not publish information notice on the buyer profile until notification has been sent to the Commission for publication in that form; they shall mention the date of dispatch.

□ 6. Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 VIII. I shall not be limited to approximately 650 words.

□ 7. Contracting authorities must be able to prove any notices are dispatched.

□ 8. The Commission shall give the contracting authority confirmation of the information sent, has been published and specify the date of that publication. Such confirmation shall constitute proof of publication.

■ **Article 37.** *Mandatory publication*

□ Contracting authorities may, in accordance with Article 36., Published notices of public contracts which are not subject to the publication requirement laid down in this Directive.

Section 2. Deadline

■ Article 38. *Tenders and the deadline to submit requests to participate*

□ 1. When contracting set a time limit and time limits for submitting requests to participate shall in particular take account of the complexity of the subject and the length of time needed to negotiate deals, cf. However, the minimum time limit provided for in this article.

□2. In the case of open procedures for tendering shall be a minimum of 52 days from the date of contract notice.

□3. In the case of restricted procedures, negotiated procedures with publication of the notice referred to in Article 30., And competitive dialogue:

a) the time limit for requests to participate be at least 37 days from the date the contract notice.

b) the tenders in a private placement to be a minimum of 40 days from the date of the invitation to tender.

□4. When contracting authorities have published a prior information notice as a general rule that may shorten the minimum time limit for the submission of tenders under. Paragraph 2. and b paragraph 3. in 36 days, but never so much that it will be less than 22 days.

The general time limit shall run from the date of the notice and in a private placement from the date of the invitation to tender.

Allow the shortened time limits referred to in the first subparagraph, provided that the prior information notice has included all the information required in Annex VII. Annex A to the contract notice, insofar as that information is available at the time the notice is published and that prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice.

□5. Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 VIII. I, may be reduced to a time limit in open procedures referred to in paragraphs 2 and 4., as the deadline for the requests to participate referred to in paragraph 3., private placements, negotiated and competitive dialogue about seven days.

□6. The shortening a time limit referred to in paragraph 2. and b paragraph 3., by five days where the contracting authority offers unrestricted and full electronic access to tender documents and any supporting documents from the date of publication of the notification in accordance with Chapter VIII. I, and the text of the notice the internet address where you can access that data.

May be added to this shortening of the time limits to shorten that referred to in paragraph 5.

□7. If the specifications and the supporting documents or additional information, for some reason not delivered within the time limit laid down in Articles 39 and 40., Although it has been requested that data in advance, or, if it is not possible to make an offer until after the inspection or examination of the documents supporting the contract documents on the ground, should extend a time limit so that all economic operators concerned may be aware of all the information needed to produce tenders.

□8. In the case of restricted procedures and negotiated procedures with publication of the notice referred to in Article 30., And it is impossible to give a deadline laid down in this article, due to lack of time, the contracting authority may set:

a) deadline for to submit a request to participate, which may not be shorter than 15 days from the date of the notice and not less than 10 days if the notice is sent by electronic means in accordance with the format and procedures for transmission are specified in section 3 VIII. Annex

B) and, if the case of restricted procedures, a time limit which shall not be less than 10 days from the date of the invitation to tender.

■ **Article 39.** *Open procedures: specifications, additional documents and information*

□ 1. In open procedures, where contracting authorities do not offer unrestricted and full direct access by electronic means, in accordance with paragraph 6. Article 38., The specifications and supporting documents shall be submitted specifications and documents to operators within six days of receipt of the request, provided that the notice has been given a reasonable time for the final deadline last.

□2. The contracting authority or the competent bodies shall provide additional information relating to the specifications and any supporting documents not later than six days before the closing date of tenders, provided that it has been requested this information in good time.

Section 3. Information content and means of transmission

■ **Article 40.** *Invitations to submit a tender, participate in the dialogue or negotiate*

□ 1. In restricted procedures, competitive dialogue and negotiated procedure with publication of a contract notice within the meaning of Article 30., The contracting authorities shall invite the selected candidates simultaneously and in writing to submit their tenders or to negotiate or, in the case of a competitive dialogue, to take part in the negotiations.

□2. The invitation to the candidates shall include either:

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

- a reference to accessing the specifications and the other documents indicated in the first indent, when they are made directly available by electronic means in accordance with 6 . paragraph. Article 38.

□3. If an entity other than the contracting authority responsible for the award procedure has the specifications, the descriptive data and / or documents of any kind in his possession shall be included in the invitation, where you can get these terms, the descriptive document and supporting documents and, if applicable , the deadline for the submission of the request for these data and any sum payable for obtaining them and payment. The competent institution shall immediately send this data to the operator of the request.

□4. The contracting authority or the competent institution shall send additional information on the specifications, the descriptive document or documents not later than six days before the closing date of tenders, provided that it has been requested this information in good time. In the case of restricted or an accelerated procedure, that period shall be four days.

□5. In addition, at least be included in the invitation to tender, participate in the dialogue or to negotiate:

- a) a reference to the contract notice has been published,
- b) final date for receipt of tenders, the address to which to send the deals and information which language or languages they should be,
- c) in the case of a competitive dialogue, the date and the address at which negotiations started and the language or languages used,
- d) information about the documents not possible to be annexed, either to support statements, which can be verified and the contractor has presented, in accordance with Article 44., or to supplement the information referred to in the article, under the conditions laid down in Articles 47 and 48. Article.,
- e) the relative weighting of the criteria for the award of a contract or, if appropriate, the order of such grounds if it is not specified in the contract notice, útboðsskilm aluminum or the descriptive document.

If the contract is awarded in accordance with the rules laid down in Article 29., The information referred to in paragraph above, although not included in the invitation to participate in the dialogue but it shall appear in the invitation to tender.

■ **Article 41.** *Information for candidates and tenderers*

□ 1. The contracting authority shall, as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award or to be withheld, including the reasons for the decision not to make a framework agreement or contract if the auction has taken place or start the auction process again or to establish a dynamic purchasing system; The contracting authority shall provide this information in writing upon request.

□ 2. On request from the party contracting authority 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, mt, in the cases referred to in paragraphs 4 and 5. Article 23., The reasons for it determines the equivalent clause is not met or the works, supplies or services do not meet the performance or functional requirements,
- any tenderer who has made an offer, the characteristics and relative advantages of the tender selected as well as the name of the tenderer was chosen or the parties to the framework agreement.

This may under no circumstances exceed 15 days from receipt of the written request.

□ 3. Contracting authorities may decide to withhold certain information referred to in Article 1., For a contract or framework agreement or to be withheld if disclosure of such information would impede law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interests of public or private operators or fair competition between them.

Section 4. Communication

■ **Article 42.** *Rules applicable to communication*

□ 1. All communication and information exchange referred to in this Title may be made by mail, fax, electronic means under. 4 and 5., By telephone in the cases and circumstances referred to in paragraph 6., Or by a combination of those means, the choice of the contracting authority.

□ 2. The means of communication chosen must 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 such that the integrity of data and the confidentiality of tenders and requests to participate are preserved and the contracting authorities examine the content of tenders and not to participate until the deadline to submit it expires.

□ 4. The equipment used in electronic communications, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology in general use.

□ 5. The following rules shall apply 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 sources. Devices for the electronic receipt of tenders and requests to participate should also comply with the requirements set out in Annex X.

b) Member States may, in accordance with Article 5. Directive 1999/93 / EC, require that electronic tenders be accompanied by an advanced electronic signature in accordance with paragraph 1. that article.

c) Member States may introduce or maintain voluntary accreditation with the aim of improving certification services for these devices.

d) prior to the deadline or to submit a request to participate shall expire tenderers or candidates, the documents, certificates and declarations referred to in Articles 45 to

50. Article. and Article 52. if they are not available in electronic form.

6. The following rules apply to the transmission of requests to participate:

a) may be notified in writing or by telephone for participation in the public auction,
b) where requests to participate in the conference should send a written confirmation before deadline notification has expired,

c) contracting authorities may require for participation sent by fax must be confirmed by post or by electronic means if it is necessary for the purposes of legal proof. The contracting authority shall notify all such requirements in the contract notice and the deadline for sending confirmation by post or electronically.

Section 5. reports

■ Article 43. *Content reports*

for each contract, each framework agreement and each dynamic purchasing system is established, contracting authorities shall prepare a written report that shall include at least the following:

a) the name and address of the contracting authority and the subject and value of the contract, framework agreement or dynamic purchasing system,

b) the names of the candidates or tenderers adopted and the reasons for their selection,

c) the names of the candidates or tenderers who were referred from and the reasons for the dismissal of their

d) grounds for dismissal last found to be abnormally low,

e) the name of the bidder the successful and the reasons why his bid was selected, and any part of the contract or framework agreement, the latter, who was chosen, plans to get a third party to work as subcontractors, if known,

f) the negotiated conditions referred to in Articles 30 and 31. and justifying the use of this procedure,

g) with respect to competitive dialogue, the conditions laid down in Article 29. and justifying the use of this procedure,

h) if necessary, the reasons why the contracting authority has decided not to contract or framework agreement or to establish a dynamic purchasing system.

The contracting authority shall take appropriate steps to document the implementation of electronic means in the award.

The report, or of its content must be sent to the Commission if it so requests.

VII. Chapter. Conduct of the procedure

Section 1. General provisions

■ Article 44. *Verification of the suitability and choice of participants and award of contracts*

1. Contracts shall be awarded on the basis of the criteria laid down in Article 53 and Article 55. Having regard to Article 24., After contracting authorities check the eligibility of the operators, who not excluded under. 45 and 46. In accordance with the criteria of economic and financial situation, professional and technical knowledge or ability referred to in points 47 to 52. Article. and, where appropriate, the rules on non-discrimination and assumptions referred to in paragraph 3.

2. Contracting may require that the participants and the bidders meet the minimum capability in accordance with Articles 47 and 48.

The scope of the information referred to in Articles 47 and 48., And the minimum capacity required for a specific contract must be related and proportionate to the subject of the contract.

This threshold shall be specified in the contract notice.

□3. In restricted procedures, negotiated procedure with publication of the notice and the competitive dialogue procedure, contracting authorities may limit the number of suitable candidates they invite to tender or to negotiate or dialogue, provided that qualified participants are enough. The contract notice shall indicate the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, maximum. In a private placement, participants shall not be less than five. In negotiated procedure with publication of a contract notice and in competitive dialogue participants shall not be less than three. Participants must be sufficient to ensure genuine competition.

The contracting authority shall provide at least an equal number of members participating in the auction and the minimum is set in advance. If candidates meeting the selection criteria and the minimum levels of ability is below the minimum number, the contracting authority may hold auction process forward in a way to give the participant or participants who meet the requirements, the opportunity to bid. Contracting authorities may give operators who did not request to participate or do not meet the requirements for capacity, the opportunity to submit bids in the same procedure.

□4. Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or tenders to be negotiated, as provided for in paragraph 4. Article 29. and 4. Article 30., They shall do so by applying the award criteria stated in the contract notice, the specifications or the descriptive document. In the final stage of the process, the number of participants to be sufficient to ensure genuine competition insofar as in the case of a sufficient number or suitable candidates.

Section 2. Criteria for qualitative selection

■ Article 45. Personal situation of the candidate or tenderer

□1. candidate or tenderer who has been convicted by final judgment of which the contracting authority is aware, one or more of the reasons set out below, should be excluded from the contract is to him a public contract:

a) participation in a criminal organization as defined in paragraph 1. Article 2. Joint Action Directive 98/733 / JHA (²⁰),

b) corruption, as defined in Article 3. the Council Act of 26 May 1997 (²¹) on the one hand and the first paragraph. Article 3. Joint Action Directive 98/742 / JHA (²²) on the other,

c) fraud within the meaning of Article 1. Convention for the protection of the financial interests of the European Communities (²³),

d) money laundering, as defined in Article 1. Council Directive 91/308 / EEC of 10 June 1991 on prevention of the financial system from being used for money laundering (²⁴).

Member States shall define the implementing provisions for this article, in accordance with national law and with regard to Community law.

They may provide for exemptions from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

Regarding this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3., And can also, if they have doubts concerning the personal situation of such candidates or tenderers, sought to competent authorities the information they consider necessary on the personal situation of the candidates or tenderers. If the information concerns a candidate or tenderer established in a Member State other than the contracting authority, the contracting authority may seek the cooperation of the competent authorities in the state. With regard to the national law of the Member State where the candidates or tenderers are established, such requests shall relate to legal and / or natural persons including, if appropriate, company directors and any person who has powers of representation, decision or control of the candidate or tenderer.

□2. The rule operators from participating in the auction:

a) if the business operator is bankrupt or is being wound up, if the estate has been subjected to liquidation, if it has entered into an arrangement with creditors, where it has ceased its activity temporarily or is in any analogous situation arising similar treatment under national laws and regulations,

b) if the request has been liquidation, termination of business or liquidation or has been sought entered into an arrangement with creditors, or upon request from a similar procedure under national laws rules,

c) if the company has been found guilty of a criminal offense of ethics of the profession by the order, which has force of res judicata in accordance with the legal provisions of the country where the offense is committed,

d) if the undertaking guilty of serious misconduct in his profession as sanningsyfirval di is possible to demonstrate,

e) if the company has defaulted on payments to Social Security as it is required under the laws of the country in which it is established or those of the country of the contracting authority,

f) if the company has not paid tax payments under the Act country in which it is established or those of the country of the contracting authority,

g) if the undertaking guilty of serious misrepresentations to the provision of the information required under this Section or has not provided the information. Member States shall define the implementing provisions for this article, in accordance with national law and with regard to Community law.

3. The contracting authority shall accept as sufficient evidence that none of the cases mentioned in paragraph 1. or A, B, C, E or F paragraph 2., applies to the economic operator:

a) for the purposes of paragraph 1. and a, b, and c of paragraph 2., the disclosure of criminal record certificate or, alternatively, an equivalent document issued by a competent judicial authority or the country of origin or of the company, which shows that these requirements are met,

b) in respect of e and f of paragraph 2., certificate by the competent authority of the Member Services.

If a certificate is not issued in the state, or if they do not cover all the cases referred to in paragraph 1. and A, B and C of paragraph 2. can affidavit the party replace them or, in those Member States where there is no provision for such declaration on oath, made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or until competent professional or trade body in the country of origin or the country whence that person.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates and declarations referred to in paragraph 3., And inform the Commission thereof. Such notification shall be subject to the data protection legislation.

■ Article 46. *Qualification*

may require that each operator intending to participate in a public contract that he is registered in the professional register or trade register, as laid down in the Member State where it is established, or provide a sworn statement or certificate as described in IX. Annex A for public works contracts, in Annex IX. Annex B for public supply contracts and IX. Annex C for public service contracts.

In the case of public service, and participants and the bidders must have a special permit or be members of certain organizations to be allowed to provide the service of his country, the contracting authority may require that they demonstrate that they have such authority or are members in such organizations.

■ Article 47. *Economic and financial standing*

1. In general, it must be possible to prove the economic and financial situation of operators

in one or more of the following methods:

- a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance,
- b) by the sheets or extracts from it if required publication of the balance sheet under the law of the country where the operator is established,
- c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract during the last three financial years maximum, depending on the day the company was founded or the economic operator started trading, if this information on turnover are available.

□2. The operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal links which it has with them. In this case prove to the contracting authority that it will have at its disposal the resources necessary, for example by producing an undertaking by those entities to that effect.

□3. Under the same conditions, a group of economic operators as referred to in Article 4., Based on the capacity of participants in the group or of other entities.

□4. The contracting authority shall specify, in the contract notice or invitation to tender, which references under Paragraph 1. they have chosen and which other references must be provided.

□5. If the operator can not, for any valid reason, submitted the documentation by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

■ **Article 48. Technical and professional ability**

□ 1. The technical and professional companies can be evaluated and tested in accordance with paragraphs 2 and 3.

□2. The operator can prove their technical ability with one or more of the following methods, depending on the nature, quantity or importance, and use of the works, supplies or services:

a) i) a list of the works carried out over the past five years as well certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules and properly completed. Where appropriate, the competent authority shall submit to the contracting authority that a certificate directly,

ii) a list of the principal deliveries effected or services provided in the past three years, with the sums, dates and recipients, whether it is a public or private. Evidence of delivery and services shall be given:

- where the recipient was a contracting authority, in the form of a certificate by the competent authority issued or validated by one,

- where the recipient was a buyer is private, a certificate from the purchaser or, if this is not possible in a statement operator itself,

b) re technicians or the technical bodies involved in the case, whether they report directly to the company, the operator or not, especially those responsible for quality control and, in the case of public works contracts, those that developers can turn to the implementation of the project,

c) a description of the technical equipment and the measures which the supplier or service provider to ensure the quality and description of facilities of the company to study and research,

d) in the case of goods or services complex or, exceptionally, is provided in special t ilgangi, by checking the output of the supplier or the technical capacity of the service provider and, if necessary, its facilities for study and research and arrangements made for quality control and responsible for contracting this examination or on behalf of, the competent, a public body in the country of supplier or service provider is established, subject

to the consent of the parties,

e) information regarding the educational and professional qualifications of the service provider or contractor and / or management of the company, in particular its ability or persons responsible for providing the service or the task,

f) when in the case of public works contracts and service contracts, and only when appropriate, by reference to the environmental management measures that the economic operator may apply to the implementation of the Convention,

g) a statement of the average annual number of employees in the service provider or contractor and the number of people in the management station for the past three years,

h) a statement of the tools, machinery and other technical equipment for the service provider or contractor for disposal of performing a contract,

i) by reference to the proportion of the contract which the service provider may subcontract,

j) with respect to product :

i) with samples, descriptions and / or photographs as possible to be certified if the contracting authority so requests,

ii) certificates from official quality control institutes or recognized organization certifying that the product, which is clearly defined by reference to certain specifications and standards, conforms to those specifications and standards.

□3. The operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal links which it has with them. In that case, he must prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by the parties joint establishment of a separate entity to the operator has access to the necessary resources.

□4. Under the same conditions, a group of operators based on the capacity of participants in the group or of other entities as referred to in Article 4.

□5. In the case of public supply contracts involving siting and installation operations, services and / or execution of the works may evaluate the ability of operators to provide the service or to execute the installation or the work, particularly with regard to their skills, efficiency, experience and reliability.

□6. The contracting authority shall specify, in the contract notice or invitation to tender, which references under. Paragraph 2. they wish to receive.

■ **Article 49.** *Quality standards*

□ Should contracting authorities submission of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards certified agency that meets the requirements for certification in accordance with European standards system. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence from operators of similar measures to ensure quality.

■ **Article 50.** *Environmental management standards*

□ Should contracting authorities, in the cases referred to in paragraph 2. Article 48., Submission of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management standards, they shall refer to the EMAS (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies in accordance with Community law or the relevant European or international standards concerning certification. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

■ **Article 51.** *Additional data and information*

The contracting authority may require the operator to supplement or clarify certificates and documents submitted in accordance with Articles 45 to 50. Article.

■ **Article 52.** *The official list of approved economic operators and certification by public and private bodies*

1. Member States may introduce either official lists of approved contractors, suppliers or service providers or certification by public or private certification bodies.

Member States shall fix the conditions for the registration of these files, and the conditions for the issue of certificates by certification bodies to the provisions of Article 45. (First paragraph.), Article 45. (a-d and g-point-paragraph 2.), Article 46. 47, Article. (1, 4 and 5.), Article 48. (1, 2, 5 and 6.), Article 49. and, if appropriate, Article 50.

Member States shall also adapt them to Article 47. (Second paragraph.) And Article 48. (Paragraph 3). In the case of registration applications from operators that are part of the group and who demonstrate that they can handle the resources that other companies in the group have had at their disposal. In those cases, the operators demonstrate to the authority that implements the official list that they exercise control over these resources out throughout the duration of the certificate confirming that they are included in the official list and for all that period will this organization continues to meet the requirements for qualification based selection set down in the articles referred to in the second subparagraph, operators relied on in connection with their registration.

2. Operators who are enrolled in public records or have received a certificate, may in each auction, delivered the contracting authority a certificate of registration issued by the competent authority or certificate by the competent certification authority issues. These certificates shall contain the information that would enable them to get registration or certificate and classification according to the list.

3. The contracting authorities of other member states shall not presume to register certified by relevant authorities in public records or a certificate issued by a certification, is indicative of eligibility except for the purposes of Article 45. (First paragraph. A-d and g of paragraph 2.), Article 46. Article 47. (b and c of paragraph 1.) and Article 48. (i-team point A, point B, point E, point g and h paragraph 2.) in the case of contractors, (ii point A, b, c, d j paragraph 2.), in the case of suppliers and (ii point a and C in paragraph 2.) in the case of service providers.

4. You can not challenge the information resulting from registration on official lists or certification without justification. With regard to the payment of social security contributions and taxes, however, may require additional proof from the operators listed with each auction.

Contracting other Member States shall apply paragraph 3. and the first subparagraph of this paragraph only in favor of economic operators established in the Member State in which the official list.

5. For any registration of operators from other Member States in an official list or for their certification by institutions referred to in paragraph 1. to require additional evidence or statements, other than economic operators are required to pay, and shall always be based on what is provided for under. 45.-49. Article. and, if appropriate, Article 50.

However, it is not possible to require operators from other Member States to obtain registration or certification in order to participate in a public auction. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other equivalent evidence.

6. Economic operators may, at any time, request to be registered in the public record or certificate. They must be informed, before long of time of the decision of the authority drawing up the list or certifying authority.

7. The certification bodies referred to in paragraph 1. Shall comply with European certification standards.

□8. Member States which have official lists or certification bodies referred to in paragraph 1. Shall be obliged to inform the Commission and other Member States of the address of the body to which applications should be sent.

Section 3. award

■ Article 53. Award criteria.

□1. Without prejudice to national laws, regulations and administrative provisions concerning the remuneration of certain services, the criteria by contracting based on the choice of the party official agreement was concluded, be either:

a) the most economically advantageous tender is selected to the contracting authority, various criteria related to the topic of the official contract, such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, after-sales service and technical assistance, delivery date and delivery period or period of completion, or

b) the lowest price only.

□2. The contracting authority shall specify in the contract notice or contract documents, in the cases referred to in paragraph 1., Or, in the case of a competitive dialogue, in the descriptive document, every assessment of the relative importance of each criteria chosen to determine the most economically advantageous tender. However, the third subparagraph.

This weight can be written as a certain interval within a reasonable maximum tolerance.

If the contracting authority considers that it is not possible to rely on weight due to lack of evidence, the authority shall indicate the criteria in descending order of importance in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document.

■ Article 54. Electronic auctions

□1. Member States may provide that contracting authorities may use electronic auctions.

□2. In the case of open or restricted procedures or negotiated under. a paragraph 1. Article 30. contracting decided that a public contract shall be preceded by an electronic auction when it is possible to determine the specifications of accuracy.

In the same circumstances may hold an electronic auction when the parties to a framework agreement invitation to tender as provided for in the second indent of the second subparagraph of paragraph 4. Article 32., And auctions where the contract is awarded under the dynamic purchasing system referred to in Article 33.

The electronic auction shall be based:

- either solely on prices when the contract is awarded to the lowest price,
- or on prices and / or new offers value factors specified in the specification when the contract is awarded to the most economically advantageous tender.

□3. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specifications shall include details on the following items:

a) the elements whose value underlying the electronic auction, provided that such features are quantifiable and can be installed expressed in figures or percentages,

b) any restrictions can be placed on the value on the basis of the terms relating to the subject of the contract,

c) the information that bidders should have access to during the electronic bid and, as appropriate, when they access them,

d) relevant information concerning the electronic auction process,

e) conditions that bidders must meet to be able to submit a bid and in particular the minimum difference is required between the last, as appropriate,

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

□4. Before commencing the electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the assumption award criteria and 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 value; 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 can be divided into several phases that are taken for each successive. The electronic auction may not start sooner than two working days after the invitations are sent out.

□5. If the contract is awarded to the most economically advantageous tender invitation shall be accompanied by the results of the full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of paragraph 2. Article 53.

The notice shall also state the mathematical formula to be used in the electronic auction to determine automatic reclassification last on the basis of the new prices and / or value. This model should incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the specifications; the aim should, however, be defined for tolerance to a specified value.

Where variants are authorized shall have a separate model for each variant.

□6. Throughout each phase of an electronic auction contracting authorities shall immediately inform all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also provide other information that has emerged concerning other prices or values, 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. They are never allowed to disclose the identities of the bidders at any stage of the electronic auction.

□7. Contracting authorities shall close an electronic auction in one of the following:

a) in the invitation to participate in the auction is given a pre-determined date and time for the end of the auction,

b) when they receive no more new prices or values which meet the requirements concerning minimum. In this case, the contracting specify, in the invitation to participate in the auction the time which they must elapse between receiving the last bid and the electronic auction,

c) when the phases in the auction, which have been specified in the invitation to take part in the auction is completed.

When contracting authorities have decided to close an electronic auction in accordance with c-section, and possibly also in accordance with the procedure laid down in paragraph, the timetable for each phase of the auction set out in the invitation to participate in the auction.

□8. When the electronic auction has been closed contracting authorities shall award the contract in accordance with Article 53. Based on the results of the electronic auction.

Contracting authorities may not use electronic auctions improperly, nor a way to prevent, restrict or distort competition or to change the subject of the contract as it was expressed in the published contract notice and defined in the specification.

■ **Article 55. Abnormally low tenders**

□ 1. If for a given contract appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

This information may relate in particular:

a) the economics of the construction method, manufacturing process or services,

b) the technical solutions have been chosen and / or any exceptionally favorable conditions available to the tenderer for the execution of the works, the supply of goods or services,

- c) the originality of the proposals bidder for works, supplies or services,
- d) compliance with the provisions on working conditions at the place of execution of works, delivery of goods or provision of services takes place,
- e) the possibility of the tenderer obtaining state aid.

2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the data submitted.

3. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, it can not be rejected on that ground alone only after the contracting authority has held discussions with the bidder and it turns out, after a reasonable period which the contracting authority sets, unable to prove that the aid has been granted by law. If the contracting authority rejects a tender in these circumstances, it shall inform the Commission thereof.

III. Title. Rules on public works concessions

CHAPTER I. Rules governing public works concessions

■ Article 56. Scope

This section applies to all public works concessions awarded by contracting authorities where the value of the contract is 6,242,000 euros or more.

Value shall be calculated in accordance with the rules applicable to public works contracts defined in Article 9.

■ Article 57. Contracts that are exempt from the scope

This Title shall not apply to public works concessions:

a) that in the cases referred to in Articles 13, 14 and 15. this Directive for public works contracts,

b) which are awarded by contracting authorities carrying out one or more of the activities referred to in Articles 3 to 7. Article. Directive 2004/17 / EC where those concessions are awarded for carrying out those activities.

This Directive shall continue to apply to public works concessions which are awarded by contracting authorities carrying out one or more of the activities referred to in Article 6. Directive 2004/17 / EC and awarded for those activities, provided that the Member State concerned of the option referred to in the second subparagraph of Article 71. its ability to defer its application.

■ Article 58. Publication of notices of public works concessions

1. Contracting authorities who wish to award a public works concession contract shall make known their intention by notification.

2. Notices of public works concessions shall contain the information referred to in Annex VII. Annex C, and, where appropriate, any other information which the contracting authorities consider useful, in accordance with the standard forms adopted by the Commission in accordance with the procedure referred to in paragraph 2. Article 77.

3. Notices shall be published in accordance with paragraphs 2 to 8. paragraph. Article 36.

4. The provisions of Article 37. the publication of notices shall also apply to public works concessions.

■ Article 59. Time limit

When contracting authorities resort to a public works concessions, the deadline for applications for the concession shall be not less than 52 days from the date of dispatch of the notice, with the exception of the cases referred to in paragraph 5. Article 38.

Apply the provisions of paragraph 7. Article 38.

■ Article 60. Sub

contracting authority may either:

a) require the concessionaire to award contracts to third parties, representing a minimum of

30% of the total value of the work that the concession contract is for, and given the way for candidates to increase this percentage, this minimum percentage being specified in the concession agreement,

b) or request the candidates for concession contracts to specify in their tenders, the total value of the work for which the concession contract which they intend to assign to third parties.

■ **Article 61.** *Additional works agreed with the concessionaire*

□ This Directive shall not apply to additional works not anticipated in the original concession project or in the initial contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein, which the contracting authority has awarded to the concessionaire, provided that the award is made to the economic operator performing such work:

- when it is not possible to separate such additional works from the original contract technically or economically without the contracting authorities a lot of inconvenience

- when such acts are strictly necessary for implementation of the initial contract, although they can be separated from him.

The aggregate value of contracts awarded for additional works may not exceed 50% of the amount of the original works concession contract.

II. Chapter. Rules on contracts awarded by concessionaires which are contracting authorities

■ **Article 62.** *Applicable rules*

□ Where the concessionaire is a contracting authority, as referred to in paragraph 9. Article 1. Shall comply with the provisions of public works contracts, as laid down in this Directive, in the case of works by third parties perform.

III. Chapter. Rules on contracts awarded by concessionaires which are not contracting authorities

■ **Article 63.** *Advertising rules: threshold and exceptions*

□ 1. Member States shall take the necessary measures to ensure that public concession holders, which are not contracting authorities apply the principles of disclosure as defined in Article 64. when they make contracts with third parties if the value of such contracts is 6.242 million euros or more.

Disclosure is not required when a contract on public works complied with the conditions specified in Article 31. this Agreement.

The value of contracts shall be calculated in accordance with the rules applicable to public works contracts laid down in Article 9.

□2. Business groups that have been formed with a view to obtaining concessions, or companies associated with them, shall not be considered third parties.

"Affiliate" business as franchisee can have a direct or indirect control or companies that can gain control over the concessionaire or which, as the concessionaire, controlled by another company on the basis of ownership, financial participation or the rules. Companies deemed to have control of another undertaking, directly or indirectly:

a) owns shares in the relevant company,

b) controls a majority of the votes attached to shares issued by the undertaking or

c) have the right to appoint more than half of the members administrative, management or supervisory body.

For a complete list of such firms must be accompanied by an application for a concession. The list shall be updated in accordance with subsequent changes in the relationship between the companies.

■ **Article 64.** *Publication of the notice*

- 1. Works concessionaires which are not contracting authorities and which wish to contracts with third party shall make known their intention by notification.
- 2. The notification shall include the information referred to in Annex VII. Annex C, and, where appropriate, any other information, the works concessionaire deemed useful in accordance with the standard forms adopted by the Commission in accordance with the procedure referred to in paragraph 2. Article 77.
- 3. The notice shall be published in accordance with paragraphs 2 to 8. paragraph. Article 36.
- 4. Also, the provisions of Article 37. the voluntary publication reports.

■ **Article 65.** *Tenders and the deadline to submit a request to participate*

- in works contracts awarded by the concessionaire which is not a contracting authority, the time limit for the submission of the request to participate, the concessionaire decides not less than 37 days from the date of the notice and tenders not less than 40 days from the date of contract notice or the invitation to tender.

Apply the provisions of Articles 5, 6 and 7. Article 38.

IV. Title. The rules for design

■ **Article 66.** *General provisions*

- 1. The rules for the organization of design contests shall be in accordance with Articles 66 to 74. Article. and shall be communicated to those interested in taking part in the competition.
- 2. Access to contests may not be limited to:
 - a) the territory or part of the territory of a Member State,
 - b) the participants are either natural or legal persons that may be required in the Member State in which the competition is held.

■ **Article 67.** *Scope*

- 1. The following design contests shall be in accordance with the provisions of this Title:
 - a) contracting authorities which are listed as central government authorities in Annex IV. I, as a threshold should be 162,000 euros or more,
 - b) contracting authorities not listed in Annex IV. I, as a threshold should be 249,000 euros or more,
 - c) all contracting of a threshold should be 249,000 euros or more where contests concern services in category 8 II. Annex A, Category 5 telecommunications services, where CPV codes correspond to the CPC reference numbers 7524, 7525 and 7526, and / or services specified in II. Annex B,
- 2. This Title shall apply to:
 - a) design contests for with a view to a public service,
 - b) design contest where participants receive prizes and / or payments.

In the cases referred to in paragraph threshold refers to the estimated value of the public services contract without VAT, including any possible prizes and / or payments to participants.

In the cases referred to in paragraph threshold refers to the total amount of prizes and payments, including the estimated value of the public services of value added tax which might subsequently be concluded under. Paragraph 3. Article 31. if the contracting authority does not exclude such an award in the contest notice.

■ **Article 68.** *Exclusions from the scope*

- This Title shall not apply to:
 - a) design contests within the meaning of Directive 2004/17 / EC which are organized by contracting authorities exercising one or more of the activities referred to in Articles 3 to

7. Article. that Directive, and is held in relation to the ongoing operations of the business, and not think about competition which is excluded from the scope of this Directive.

This Directive shall continue to apply a design contest organized by contracting authorities exercising one or more of the activities referred to in Article 6. Directive 2004/17 / EC, and is held for those activities, provided that the Member State concerned of the option referred to in the second subparagraph of Article 71. its ability to defer its application,

b) contests which are organized in the same cases referred to in Articles 13, 14 and 15. this Directive for public service.

■ **Article 69.** *Notices*

1. Contracting authorities organize a design contest shall make known their intention by means of a contest notice.

2. Contracting authorities which have held a design contest shall send a notice of the results of the competition in accordance with Article 36. and they must be able to prove the date of dispatch.

If delivery of information on the results of design could impede law enforcement, be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private companies or fair competition between service providers are not required to disclose such information.

3. The provisions of Article 37. the publication of notices shall also apply to contests.

■ **Article 70.** *Form and manner of publication of notices of contests*

1. The notices referred to in Article 69. Shall contain the information referred to in Annex VII. Annex D, in accordance with the standard model notices adopted by the Commission in accordance with the procedures provided. Paragraph 2. Article 77.

2. notification shall be made in accordance with paragraphs 2 to 8. paragraph. Article 36.

■ **Article 71.** *Means of communication*

1. The provisions of paragraphs 1, 2 and 4. Article 42. apply to all communications relating to contests.

2. Communication, information exchange and storage of information shall be such as to ensure that the integrity and confidentiality of all information that participants in the competition provide, and that the jury does not check content of plans and projects until after the deadline to submit them is expired.

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

a) information regarding the specifications necessary for the electronic submission of plans and projects, including encryption, shall be available to the parties concerned, devices for the electronic receipt of plans and projects shall comply with the requirements set out in Annex X,

b) Member States may introduce or maintain voluntary accreditation with the aim of improving certification services for these devices,

■ **Article 72.** *Selection of competitors*

Where design contests are restricted to a limited number of participants, contracting authorities shall lay down clear and non-discriminatory selection criteria. Participants must be sufficient to ensure genuine competition.

■ **Article 73.** *The composition of the jury*

The jury shall be composed of individuals who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the jury members have the same or similar qualifications.

■ **Article 74.** *Decisions of the jury*

1. The jury shall be autonomous in its decisions or opinions.

2. It shall examine the plans and proposals, participants submitted anonymously and solely

on the basis of the criteria indicated in the contest notice.

- 3. It shall record its ranking of projects on their merits in the report, the members signed, together with its remarks and any points that may need clarification.
- 4. Anonymity must be observed until the opinion or decision of the jury is available.
- 5. Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.
- 6. Complete minutes shall be of the dialogue between jury members and candidates.

Title V. The obligation to provide statistics, implementing and final provisions

■ Article 75. *The obligation to provide statistics*

In order to assess the effectiveness of the application of this Directive, no later than October 31 of each year, submit to the Commission a statistical report, in accordance with Article 76., Is prepared separately for each type of contract, public supply contracts and public service contracts by the contracting authority made the year before.

■ Article 76. *Content of statistical reports*

1. The statistical report shall include at least the following information for each contracting authority listed in Annex IV. Annex:

- a) the number and value of contracts awarded and covered by this Directive,
- b) the number and total value of contracts awarded on the basis of an exemption from the WTO.

A breakdown of the items referred to in the first subparagraph, as follows, if possible:

- a) contract award procedures used, and
- b) for each of these procedures, works as given in Annex I and products and services that are included in II. I, presented according to the classification CPV- nomenclature
- c) national operator of the contract with.

If contracts have been concluded according to the negotiated procedure, the data referred to in the first subparagraph, also broken down by the circumstances referred to in Articles 30 and 31. and shall specify the number and value of contracts awarded in the Member State or third country which is home land developer who was chosen.

2. The statistical report shall include at least the following information for each category of contracting authority which is not given in Annex IV. Annex:

- a) the number and value of contracts awarded, broken down in accordance with the second subparagraph of paragraph 1.,
- b) the total value of contracts awarded on the basis of an exemption from the WTO.

3. The statistical report shall set out any other statistical information required by the WTO.

The information referred to in the first subparagraph shall be determined in accordance with paragraph 2. Article 77.

■ Article 77. *Advisory Committee*

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Article 1. Decision 71/306 / EEC (²⁵) (hereinafter called "the Committee").

2. Where reference is made to this paragraph, Articles 3 and 7. Decision 1999/468 / EC in accordance with Article 8. her.

3. The Committee shall adopt its rules.

■ Article 78. *Revision of the thresholds*

1. The Commission shall verify the thresholds established in Article 7., Every two years after the entry into force of this Directive and shall, if necessary, revise them in accordance with paragraph 2. Article 77.

The calculation of these thresholds shall be based on the average daily value of the euro, Special Drawing Rights (SDR), the 24-month period ending on the last day of August preceding the revision with effect from 1 January. Thresholds thus revised shall, where

necessary, be rounded down to the nearest thousand euro so as to ensure that taking into account the current thresholds under the WTO Agreement, which are expressed as special drawing rights.

□2. Simultaneously under review. Paragraph 1. The Commission shall, in accordance with paragraph 2. Article 77. Align:

a) the thresholds established in paragraph first subparagraph of Article 8. In Article 56. and the first subparagraph of paragraph 1. Article 63., Revised threshold applying to public works contracts,

b) the thresholds established in paragraph b of the first subparagraph of Article 8. and a paragraph 1. Article 67., Revised threshold applying to public service contracts concluded by the contracting authorities referred to in IV. I,

c) the threshold laid down in B and C of paragraph 1. Article 67. The revised threshold applying to public service contracts awarded by the contracting authorities not included in Annex IV. Annex.

□3. The value of the thresholds set pursuant. Paragraph 1. in the national currency of a Member State which is not participating in monetary union is normally to be adjusted every two years from 1 January 2004. The calculation of such value shall be based on the average daily value of those currencies, expressed in euro, over the 24 months ending on the last day of August preceding the revision with effect from 1 January.

□4. The Commission shall publish a revised thresholds referred to in paragraph 1., And the value of the national currency, referred to in paragraph 3., In *the Official Journal of the European Union* at the beginning of November after review.

■ Article 79. Amendments

□ 1. The Commission may amend, in accordance with paragraph 2. Article 77 .:

a) the technical procedures for the calculation methods set out in the second subparagraph of paragraph 1. Article 78. and in paragraph 3. 78. Article.,

B) procedures for the drawing-up, transmission, translation, collection and distribution of the notices referred to in 35, 58, 64 and 69 of. and statistical reports provided for in the fourth subparagraph of paragraph 4. Article 35. and 75 and 76 thereof.,

c) the procedures for specific reference in the notices to particular positions in the CPV nomenclature,

d) the lists of bodies and categories of persons III. I covered by public law, when it is necessary on the basis of reports from Member States,

e) the lists of bodies on behalf of the governments of the IV. Annex following the adaptations necessary for the Agreement;

f) the reference numbers in the nomenclature set out in Annex I, as long as it does not change the material scope of this Directive, and the procedures for reference in the notices to particular positions of this nomenclature

g) reference numbers in the nomenclature set out in Annex II. I, as long as it does not change the material scope of this Directive, and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in the Annex,

h) the procedure for sending and publishing data referred to in VIII. Annex on the basis of technology or administrative reasons,

i) the technical details and characteristics of the devices for electronic receipt referred to in points f and g Annex X.

■ Article 80. Implementation

□ 1. Member States shall bring into force the laws to comply with this Directive by 31 January 2006. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member

States shall determine how such reference.

2. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive.

■ **Article 81. Control**

in accordance with Council Directive 89/665 / EEC of 21 December 1989 on the approximation of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (²⁶) Member States should ensure implementation of this Directive by effective, available and transparent procedures.

With a view they may, among other things, appoint or establish an independent body.

■ **Article 82. Repeal**

Directive 92/50 / EEC, except for Article 41., And Directives 93/36 / EEC and 93/37 / EEC is repealed from the date specified in Article 80. Without prejudice to the obligations of Member States concerning the deadlines for transposition and application set out in Annex XI. Annex.

References to the repealed Directives as references to this Directive and shall be read in accordance with the correlation table in Annex XII. Annex.

■ **Article 83. Entry**

shall enter into force on the day of its publication in *the Official Journal of the European Union*.

■ **Article 84. Recipients**

This Directive is addressed to the Member States.

I.-X. Annex ¹⁾

¹⁾ *The text of the Annexes, see OJ. A 2007.*

⁽¹⁾ OJ. EC C 29 E, 30.1.2001, p. 11 and OJ. EC C 203 E, 27.8.2002, p. 210. ⁽²⁾ OJ. EC C 193, 10.7.2001, p. 7. ⁽³⁾ OJ. EC C 144, 16.5.2001, p. 23. ⁽⁴⁾ Opinion of the European Parliament of 17 January 2002 (OJ. EC C 271 E, 11.7.2002, p. 176), Council Common Position of 20 March 2003 (OJ. EU C 147 E, 24.6.2003, p. 1) and position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Legislative Resolution of 29 January 2004 and Council Decision of 2 February 2004. ⁽⁵⁾ OJ. L 209, 24.7.1992, p. 1. Directive as last amended by Commission Directive 2001/78 / EC (OJ. L 285, 10.29.2001, p. 1). ⁽⁶⁾ OJ. L 199, 09.08.1993, p. 1. Directive as last amended by Commission Directive 2001/78 / EC. ⁽⁷⁾ Accession. L 199, 09.08.1993, p. 54. Directive as last amended by Commission Directive 2001/78 / EC. ⁽⁸⁾ OJ. L 336, 23.12.1994, p. 1. ⁽⁹⁾ OJ. EU L 134, 30.4.2004, p. 1. ⁽¹⁰⁾ OJ. L 199, 09.08.1993, p. 84. Directive as amended by Commission Directive 2001/78 / EC (OJ. L 285, 10/29/2001, p. 1). ⁽¹¹⁾ Accession. L 18, 21.1.1997, p. 1. ⁽¹²⁾ OJ. L 340, 12.16.2002, p. 1. ⁽¹³⁾ OJ. L 13, 19.1.2000, p. 12. ⁽¹⁴⁾ OJ. L 178, 17.7.2000, p. 1. ⁽¹⁵⁾ Council Directive 2000/78 / EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ. L 303, 02.12.2000, p. 16). ⁽¹⁶⁾ Council Directive 76/207 / EEC of 9 February 1976 on the implementation of the principle of equality between men and women as regards access to employment, vocational training and promotion, and working conditions (OJ. L 39, 14.2.1976, p. 40). Amended by Directive 2002/73 / EC (OJ. L 269, 05.10.2002, p. 15). ⁽¹⁷⁾ Regulation (EC) No. 761/2001 of 19 March 2001 on the voluntary participation of companies / institutions in EMAS (EMAS) (OJ. L 114, 24.4.2001, p. 1). ⁽¹⁸⁾ Accession. L 184, 17.7.1999, p. 23. ⁽¹⁹⁾ OJ. Journal L 124, 06/08/1971, p. 1. ⁽²⁰⁾ OJ. L 351, 29.12.1998, p. 1. ⁽²¹⁾ OJ. EC C 195, 25.6.1997, p. 1. ⁽²²⁾ OJ. L 358, 12.31.1998, p. 2. ⁽²³⁾ OJ. EC C 316, 11/27/1995, p. 48. ⁽²⁴⁾ OJ. L 166, 28.6.1991, p. 77. Directive as amended by Directive 2001/97 / EC of 4 December 2001 (OJ. L 344, 28.12.2001, p. 76). ⁽²⁵⁾ OJ. L 185, 08/16/1971, p. 15. Decision as amended by Decision 77/63 / EEC (OJ. L 13, 15.1.1977, p. 15). ⁽²⁶⁾ OJ. L 395, 30.12. 1989, p. 33. Directive as amended by Directive 92/50 / EEC.

[Appendix II.

Amendment to Directive 2004/18 / EC. ...] ¹⁾

¹⁾ [Act No. 65/2014, Article 4.](#)

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