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2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0439(COD)

3.9.2012

AMENDMENTS

445 - 749

Draft report
Marc Tarabella
(PE483.470v02-00)

on the proposal for a directive of the European Parliament and of the Council
on procurement by entities operating in the water, energy, transport and postal
services sectors

Proposal for a directive
(COM(2011)0895 – C7-0007/2012 – 2011/0439(COD))

Amendment 445
Marc Tarabella

Proposal for a directive
Article 29 – paragraph 2

Text proposed by the Commission

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

Amendment

deleted

Or. fr

Amendment 446
Pablo Arias Echeverría

Proposal for a directive
Article 29 – paragraph 2

Text proposed by the Commission

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.

Amendment

The design of the procurement shall not be made with the objective of excluding it from the scope of this Directive or of artificially narrowing competition.
Procedures shall always be accompanied by suitable safeguards that ensure compliance with the principles of equal treatment and transparency, free competition, advertising and efficient management of public resources.

Or. es

Amendment 447
Cornelis de Jong

Proposal for a directive
Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Contracting entities shall respect the delay of payment as established in Directive 2011/7/EU.

Or. en

Amendment 448
Sergio Gaetano Cofferati

Proposal for a directive
Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Contracting entities shall aim for "best value" in procurement policy. This is achieved through the awarding of the public contract to the most economically advantageous tender.

Or. en

Amendment 449
Sergio Gaetano Cofferati

Proposal for a directive
Article 29 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

The details of procurement contracts shall be made public.

Or. en

Amendment 450
Sergio Gaetano Cofferati

Proposal for a directive
Article 29 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

Economic operators shall comply with obligations relating to social and employment protection and the working conditions which apply in the place where the work, service or supply is to be performed as set out by Union and national legislation and/or collective agreements or international labour law provisions listed in Annex XIV.

Or. en

Amendment 451
Heide Rühle

Proposal for a directive
Article 30 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 452
Pablo Arias Echeverría

Proposal for a directive
Article 30 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

However, in the case of service and works contracts as well as supply contracts

However, in the case of service and works contracts as well as supply contracts

covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the **names and** relevant professional qualifications of the staff responsible for the performance of the contract in question.

covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the relevant professional qualifications of the staff responsible for the performance of the contract in question.

Or. es

Amendment 453
Heide Rühle

Proposal for a directive
Article 31 – paragraph 1

Text proposed by the Commission

Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled **or** disadvantaged **workers**.

Amendment

Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled **or** disadvantaged **persons**. **'Disadvantaged persons' includes amongst others: the unemployed, people experiencing particular difficulty in achieving integration, people at risk of exclusion, members of vulnerable groups and members of disadvantaged minorities.**

Or. en

Justification

The term 'disadvantaged persons' needs to be specified as it is much wider than 'handicapped persons' referred to in the current Directives. This definition creates more legal clarity.

Amendment 454
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 31 – paragraph 1

Text proposed by the Commission

Member States may reserve the right to participate in procurement procedures to sheltered workshops *and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers* or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30 % of the employees of those *workshops*, economic operators or programmes are *disabled or* disadvantaged workers.

Amendment

Member States may reserve the right to participate in procurement procedures to:

(a) sheltered workshops mainly promoted by and involving not-for-profit organisations, or provide for such contracts to be performed in the context of sheltered employment programmes, provided that the majority of the workers concerned are disabled persons who, owing to the nature or seriousness of their disabilities, cannot carry out a professional activity under normal conditions or find employment easily in the ordinary market;

(b) social enterprises or programmes whose main aim is the social and professional integration of disadvantaged workers, provided that more than 30 % of the employees of those economic operators or programmes are disadvantaged workers.

The call for competition shall make reference to this provision.

In Member States in which circumstances justify it, in that there are a significant number of disabled persons who can work but who are not working, the reservation of contracts described in point (a) above shall be equal to at least the number or percentage of contracts indicated by the

contracting bodies or other competent bodies.

Or. es

Amendment 455

Frank Engel

Proposal for a directive

Article 32 – paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Non-compliance with this obligation shall render the contracting entity liable.

Or. fr

Amendment 456

Heide Rühle

Proposal for a directive

Article 32 – paragraph 2

Text proposed by the Commission

Amendment

2. *Unless otherwise provided* in this Directive or in the national law **concerning access to information**, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

2. *Notwithstanding provisions* in this Directive or in the national law and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

Or. en

Justification

To clarify that this rule does not apply if the contracting authority is entitled or obliged to pass the relevant information - for example in due process of law.

Amendment 457

Frank Engel

Proposal for a directive

Article 32 – paragraph 2

Text proposed by the Commission

2. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information forwarded to it by economic operators *which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.*

Amendment

2. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose information *and details of tenders* forwarded to it by economic operators.

Or. fr

Amendment 458

Philippe Juvin

Proposal for a directive

Article 32 – paragraph 2

Text proposed by the Commission

2. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive the contracting entity shall not disclose

Amendment

2. Unless otherwise provided in this Directive or in the national law concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 64 and 69 of this directive, the contracting entity shall not disclose

information forwarded to it by economic operators *which they have designated as confidential, including, but not limited to*, technical or trade secrets and the confidential aspects of tenders.

information forwarded to it by economic operators, *in particular* technical or trade secrets and the confidential aspects of tenders.

Non-compliance with this obligation shall render the contracting entity liable.

Or. fr

Justification

Strengthening of the provisions on the confidentiality of the information forwarded by candidates or tenderers to the contracting entity during the award procedure. The contracting entity is liable if sensitive information, such as technical or trade secrets, is disclosed.

Amendment 459
Sergio Gaetano Cofferati

Proposal for a directive
Article 32 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Article 32 (1) and (2) shall not prevent the public disclosure of contracts once concluded including any subsequent changes.

Or. en

Amendment 460
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 32 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Article shall not prevent public disclosure of concluded contracts, including any subsequent changes.

Or. en

Amendment 461
Cristian Silviu Buşoi

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

*(c) telephone in the cases and
circumstances referred to in paragraph 6;* **deleted**

Or. en

Justification

In practice, telephone is not used for such procedures. Communication means which are quicker and ensure traceability are preferred.

Amendment 462
Frank Engel

Proposal for a directive
Article 33 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission ***shall be empowered to adopt delegated acts in accordance with Article 98 to establish the mandatory*** use of ***certain*** technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission ***should recommend*** use of ***specific*** technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.

Or. en

Amendment 463
Cristian Silviu Buşoi

Proposal for a directive

Article 33 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

(a) requests to participate in procedures for the award of contracts may be made in writing *or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;*

Amendment

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

Or. en

Justification

In practice, telephone is not used for such procedures. Communication means which are quicker and ensure traceability are preferred.

Amendment 464

Heide Rühle

Proposal for a directive

Article 34 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, at the latest 2 years after the date provided for in Article 101(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

Member States shall ensure that, at the latest 4 years after the date provided for in Article 101(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. en

Justification

This timeframe is too tight.

Amendment 465

Malcolm Harbour, Edvard Kožušník, Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 34 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, **at the latest 2 years after the date provided for** in Article 101(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

Member States shall ensure that, **by the 1st January 2017, at least 70% of procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.**

Member States shall ensure that, **by the 1st January 2020, 100% of** procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. en

Justification

This two step approach is considered as more realistic and achievable target setting, and allows contracting authorities sufficient planning and implementation time.

Amendment 466
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 34 – paragraph 1

Text proposed by the Commission

Member States shall **ensure that, at the latest 2 years after the date provided for** in Article 101(1), all procurement procedures under this Directive **are performed using electronic means of communication, in particular e-submission**, in accordance with the requirements of this Article.

Amendment

Member States shall **take all necessary steps to facilitate the use of electronic means of communication, in particular e-submission, for** all procurement procedures under this Directive, in accordance with the requirements of this Article.

Or. en

Amendment 467
Robert Rochefort

Proposal for a directive
Article 34 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, at the latest **2 years** after the date provided for in Article 101(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Amendment

Member States shall ensure that, at the latest **3 years** after the date provided for in Article 101(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

Or. fr

Amendment 468
Lara Comi

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall, ***in respect of contracting authorities within the meaning of point 1 of Article 2***, provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Amendment

Member States shall provide for rules to effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures that are subject to this Directive, including the design and preparation of the procedure, the drawing-up of the procurement documents, the selection of candidates and tenderers and the award of the contract, so as to avoid any distortion of competition and ensure equal treatment of all tenderers.

Or. it

Amendment 469
Frank Engel

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a **private** interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Amendment

The notion of conflict of interests shall at least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a **common** interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. en

Amendment 470
Marc Tarabella

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The notion of conflict of interests shall **at least** cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Amendment

The notion of conflict of interests shall cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. fr

Amendment 471
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The notion of conflict of interests shall **at**

Amendment

The notion of conflict of interests shall

least cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

cover any situation where the categories of persons referred to in paragraph 2 have, directly or indirectly, a private interest in the outcome of the procurement procedure, which may be perceived to impair the impartial and objective performance of their duties.

Or. en

Amendment 472
Frank Engel

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

For the purposes of this Article, **'private interests'** means any family, ***emotional life, economic, political or other*** shared ***interests*** with the candidates or the tenderers, including conflicting professional interests.

Amendment

For the purposes of this Article, **"common interests"** means any ***economic interest or family ties***, shared with the candidates or the tenderers, including conflicting professional interests.

Or. en

Amendment 473
Marc Tarabella

Proposal for a directive
Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

For the purposes of this Article, 'private interests' means any family, emotional life, economic, political or other shared interests with the candidates or the tenderers, ***including conflicting professional interests.***

Amendment

'Private interests' shall be understood to mean any property or financial shared interests with the candidates or the tenderers ***or advantages stemming from direct financial payments linked to employment, an employment contract or investments as well as involvement in activities supported under the contracts.***

Or. fr

Amendment 474

Lara Comi

Proposal for a directive

Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

For the purposes of this Article, "private interests" means any family, ***emotional life***, economic, political ***or other*** shared interests with the candidates or the tenderers, including conflicting professional interests.

Amendment

For the purposes of this Article, "private interests" means any family, economic ***or*** political shared interests with the candidates or the tenderers, including conflicting professional interests.

Or. it

Amendment 475

Marc Tarabella

Proposal for a directive

Article 36 – paragraph 2 – point b

Text proposed by the Commission

(b) the chairperson of the contracting authority and members of decision-making bodies of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

Amendment

deleted

Or. fr

Amendment 476

Heide Rühle

Proposal for a directive

Article 36 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the chairperson ***of the contracting authority and members of decision-making bodies*** of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

(b) the chairperson of the contracting authority who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.

Or. en

Justification

'Members of the decision making bodies' means local councillors, regional and national deputies - this is a very far reaching definition creating a lot of bureaucracy. There are other instruments in place in most Member States better adapted to the need to fight corruption.

Amendment 477

Heide Rühle

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 94 whether any candidate or tenderer has submitted a declaration.

(b) that candidates and tenderers, ***e.g. company directors or any other person having powers of decision, powers or control in respect of the candidate or tenderer***, are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting authority shall indicate in the individual report referred to in Article 94 whether any candidate or tenderer has submitted a declaration.

Or. en

Amendment 478

Lara Comi

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting **authority** shall indicate in the individual report referred to in Article 94 whether any candidate or tenderer has submitted a declaration.

Amendment

(b) that candidates and tenderers are required to submit, **also in accordance with the code of ethics drawn up by the contracting entity**, at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; the contracting **entity** shall indicate in the individual report referred to in Article 94 whether any candidate or tenderer has submitted a declaration.

Or. it

Amendment 479

Jürgen Creutzmann

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests; **the contracting authority shall indicate in the individual report referred to in Article 94 whether any candidate or tenderer has submitted a declaration.**

Amendment

(b) that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2(b), which are likely to place those persons in a situation of conflict of interests;

Or. en

Amendment 480

Lara Comi

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In the event of a conflict of interests, the contracting **authority** shall take appropriate measures. Those measures may include the recusal of the staff member in question from involvement in the affected procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Amendment

In the event of a conflict of interests, the contracting **entity** shall take appropriate measures. Those measures may include the recusal of the staff member in question from involvement in the affected procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Or. it

Amendment 481

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where privileged links are identified, the contracting authority shall immediately inform the oversight body designated in accordance with Article 93 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. If the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Amendment

deleted

Or. en

Amendment 482
Heide Rühle

Proposal for a directive
Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where privileged links are identified, the contracting authority shall immediately ***inform the oversight body designated in accordance with Article 93 and*** take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. ***If the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.***

Amendment

Where privileged links are identified, the contracting authority shall immediately take appropriate measures to avoid any undue influence on the award process, ***document those measures adequately*** and ensure equal treatment of candidates and tenderers.

Or. en

Justification

far too bureaucratic, one purpose of this revision was to simplify in order to create more cost-effectiveness. The last sentence is not necessary as the first sentence is precise enough. Transparency is the main priority.

Amendment 483
Lara Comi

Proposal for a directive
Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where privileged links are identified, the contracting ***authority*** shall immediately inform the oversight body designated in accordance with Article 93 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. If the conflict of interests cannot be effectively remedied by other means,

Amendment

Where privileged links are identified, the contracting ***entity*** shall immediately inform the oversight body designated in accordance with Article 93 and take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. If the conflict of interests cannot be effectively remedied by other means,

the candidate or tenderer concerned shall be excluded from the procedure.

the candidate or tenderer concerned shall be excluded from the procedure.

Or. it

Amendment 484
Jürgen Creutzmann

Proposal for a directive
Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where privileged links are identified, the contracting authority shall immediately ***inform the oversight body designated in accordance with Article 93 and*** take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. ***If*** the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Amendment

Where privileged links are identified, the contracting authority shall immediately take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. ***Where*** the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.

Or. en

Amendment 485
Jürgen Creutzmann

Proposal for a directive
Article 36 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that an individual who reports undisclosed conflicts of interest of other staff members referred to in paragraph 2(a) in good faith has the right to be protected against retaliation. Retaliation means any direct or indirect detrimental action recommended, threatened or taken against an individual because of such action.

Justification

Member States should implement a well-functioning whistleblowing system to ensure that these provisions have an impact.

Amendment 486
Heide Rühle

Proposal for a directive
Article 36 – paragraph 4

Text proposed by the Commission

Amendment

4. All measures taken pursuant to this Article shall be documented in the individual report referred to in Article 94.

deleted

Or. en

Amendment 487
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 36 a (new)

Text proposed by the Commission

Amendment

Article 36 a

Protection of whistleblowers

Contracting entities shall have in place internal whistleblowing procedures for staff to ensure that:

(a) any staff member (including temporary and contract workers, interns and consultants) who makes a good-faith disclosure regarding any type of material wrongdoing is protected from any and all forms of retaliation, harassment or deleterious actions;

(b) the confidentiality of whistleblowers is maintained unless explicitly waived by

them;

(c) adequate mechanisms are made available for disclosures to be made, such as helplines and online forms;

(d) a whistleblower who has been retaliated against has the right to a fair hearing before an impartial forum and shall be fully compensated; those who commit retaliation shall be duly sanctioned;

(e) disclosures are properly investigated and corrective action taken (if appropriate), and that whistleblowers have the option to participate in these procedures;

(f) managers must prove that any actions taken against a whistleblower were motivated by reasons other than the whistleblowing;

(g) inaccurate disclosures, if made in good faith, are protected; disclosures shown to be made in bad faith are not protected;

(h) management and staff are adequately trained in whistleblower rights, policies and procedures;

(i) whistleblower policies are monitored and evaluated at regular intervals by independent bodies and

(j) external whistleblowing to elected officials, NGOs, the media and other appropriate parties is protected if internal channels do not function or do not exist.

Or. en

Amendment 488
Philippe Juvin

Proposal for a directive
Article 37 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) unduly influence the decision-making process of the contracting entity or obtain confidential information that may confer upon them undue advantages in the procurement procedure;

(a) unduly influence the decision-making process of the contracting entity ***via illicit means*** or obtain confidential information that may confer upon them undue advantages in the procurement procedure;

Or. fr

Justification

Clarification of the provisions on illicit conduct.

Amendment 489
Marc Tarabella

Proposal for a directive
Title 1 – chapter 4 a (new)

Text proposed by the Commission

Amendment

Chapter IVa

Rules on reciprocity

Article 37a

Exclusion by contracting authorities and contracting entities of tenders involving products and services which are not covered by an international agreement

1. In keeping with the provisions set out below, contracting entities shall assess whether tenders involving works, supplies or services originating in third countries which are not bound by an international agreement should be excluded from public procurement procedures if the value of the non-covered works, supplies or services represents more than 50 % of the overall value of the works, supplies or services making up the tender. A tender originating in a third country which is not bound by an international agreement shall automatically be rejected if the price is 30 % lower than the average price or

cost of the other tenders.

2. Contracting entities may require tenderers to provide information about the origin of the works, supplies and services contained in the tender and about their value. They shall accept declarations on the tenderer's honour as provisional grounds for not excluding a tender pursuant to paragraph 1. A contracting authority may at any stage of the procedure ask a tenderer to submit all or some of the required documents where this appears necessary to ensure the proper conduct of the procedure. If contracting entities receive tenders which they intend to exclude in accordance with the provisions of paragraph 1, they shall notify the Commission. They may continue their assessment of the tenders during the notification procedure. The notification shall be forwarded electronically, using a standard form. The Commission may adopt implementing acts establishing standard forms to be used to submit declarations concerning the origin of works, supplies or services. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2). The standard form shall contain the following information:

(a) the name of and contact details for the contracting entity;

(b) a description of the subject-matter of the contract;

(c) the name of and contact details for the economic operator whose tender is to be excluded;

(d) information concerning the origin of the economic operator, the works, supplies or services and their value.

3. If the Commission rejects the contracting entity's decision to exclude a tender pursuant to the provisions of paragraph 1, it shall inform the contracting authority, giving its reasons,

within 15 days from the first working day after the date on which it received the notification of intent to exclude. This period may be extended once for a maximum of 15 days in duly substantiated cases, in particular if the information contained in the notification of intent to exclude or in the documents attached thereto is incomplete or inaccurate or if the facts as reported undergo substantive changes. If, at the end of that 30-day period, the Commission has not adopted a decision approving or rejecting the exclusion of the tender, that exclusion shall be deemed to have been approved by the Commission.

4. Contracting entities shall require tenderers to provide information about the origin of the products and services contained in the tender and about their value. They shall accept declarations on the tenderer's honour as provisional grounds for not excluding a tender pursuant to paragraph 1. A contracting entity may at any stage of the procedure ask a tenderer to submit all or some of the required documents where this appears necessary to ensure the proper conduct of the procedure.

5. Decisions to exclude tenders may be taken:

(a) if the international agreement concerning access to the market in the area of public procurement concluded between the Union and the country of origin of the products or services sets out, in respect of the products or services whose exclusion is being proposed, explicit market access reservations formulated by the Union;

(b) in the absence of an agreement as referred to in point (a), if the third country concerned implements restrictive measures concerning procurement which give rise to a lack of substantial reciprocity in terms of market access between the Union and the third country

concerned.

For the purposes of point (b), substantial reciprocity shall be presumed not to exist if the restrictive measures concerning procurement result in serious and persistent discrimination against Union economic operators, works, supplies and services.

6. The Commission shall hear the contracting entities concerned before taking a decision pursuant to paragraph 3.

Article 38b

Implementation of the conditions governing reciprocity

Contracts concluded with an economic operator in breach of the Commission's intention to exclude a tender pursuant to Article 38a, following notification by the contracting entity of its decision to exclude, shall be declared null and void within the meaning of Directive 2007/66/EC.

Or. fr

Amendment 490
Malcolm Harbour

Proposal for a directive
Title 1 – chapter 4 a (new)

Text proposed by the Commission

Amendment

Chapter IV a

Treatment of non-covered supplies or services

Article 37a

Exclusion of tenders comprising non-covered supplies or services

1. Upon the request of contracting entities, the Commission shall assess whether to approve, for contracts with an

estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts, tenders comprising supplies or services originating from outside the Union, if the value of the non-covered supplies or services exceeds 50 % of the total value of the supplies or services constituting the tender, under the following conditions.

2. Where contracting entities intend to request the exclusion from procedures for the award of contracts on the basis of paragraph 1 they shall indicate this in the contract notice they publish in accordance with Article 63.

Contracting entities shall require tenderers to provide information on the origin of the supplies and/or services contained in the tender, and on their value.

The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of supplies and services.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2).

Where contracting entities receive tenders that meet the conditions of paragraph 1 for which they intend to request the exclusion for that reason, they shall notify the Commission. During the notification procedure the contracting entity may continue its analysis of the tenders.

The notification shall be sent by electronic means using a standard form. The Commission shall adopt implementing acts establishing the standard forms. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 100(2). That standard form shall contain the following information:

(a) the name and contact details of the

contracting entity;

(b) a description of the object of the contract;

(c) the name and contact details of the economic operator whose tender would be excluded;

(d) information on the origin of the economic operator, the supplies and/or services and their value;

The Commission may ask the contracting entity for additional information.

That information shall be provided within eight working days, commencing on the first working day following the date on which it receives the request for additional information. If the Commission receives no information within this period, the period established in paragraph 3 shall be suspended until the Commission receives the requested information.

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 100(2a). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been rejected by the Commission.

4. When adopting implementing acts pursuant to paragraph 3, the Commission

shall approve the intended exclusion in the following cases:

(a) if the international agreement concerning market access in the field of public procurement between the Union and the country where the supplies and/or services originate contains, for the supplies and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union;

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned.

For the purposes of point (b), a lack of substantial reciprocity is presumed where restrictive procurement measures result in serious and recurring discriminations of Union economic operators, supplies and services.

When adopting implementing acts pursuant to paragraph 3, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

5. When assessing whether a lack of substantial reciprocity exists, the Commission shall examine the following:

(a) to what degree public procurement laws of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination against Union supplies, services and economic operators;

(b) to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union supplies, services and economic operators.

6. Before the Commission takes a decision pursuant to paragraph 3 it shall hear the

tenderer or tenderers concerned.

7. Contracting entities which have excluded tenders pursuant to paragraph 1 shall indicate this in the contract award notice published pursuant to Article 64 of this Directive.

Article 37b

Rules of origin

1. The origin of a product shall be determined in accordance with Article 22 to 26 of Regulation (EC) No 2913/1992 of the European Parliament and of the Council of 12 October 1992 establishing the Community Customs Code¹.

2. The origin of a service shall be determined on the basis of the origin of the natural or legal person providing it.

3. For the purpose of this Directive, supplies or services originating in the countries of the European Economic Area other than the Member States shall be treated equally to those originating in the Member States.

Article 37c

Implementation of the reciprocity conditions

Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to Article 37a upon intended exclusion notified by contracting entities shall be declared ineffective within the meaning of Directive 2007/66/EC.

Or. en

Amendment 491
Heide Rühle

Proposal for a directive
Article 39 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as regulated in this Directive.

Amendment

Member States shall provide that contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition ***and innovation partnerships*** as regulated in this Directive.

Or. en

Amendment 492
Evelyne Gebhardt

Proposal for a directive
Article 39 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Member States shall provide that contracting authorities must apply the competitive procedure with negotiation or competitive dialogue if the public contract might lead to a transfer of undertaking.

Or. de

Amendment 493
Marc Tarabella

Proposal for a directive
Article 39 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure ***or by an innovation partnership;***

(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure.

Or. fr

Amendment 494
Marc Tarabella

Proposal for a directive
Article 39 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure **or by an innovation partnership;**

Amendment

(b) a notice on the existence of a qualification system pursuant to Article 62 where the contract is awarded by restricted or negotiated procedure.

Or. fr

Amendment 495
Heide Rühle

Proposal for a directive
Article 39 – paragraph 3

Text proposed by the Commission

3. Member States **may** provide that contracting entities may apply a negotiated procedure without prior call for competition **only in the specific cases and circumstances** referred to expressly in Article 42.

Amendment

3. Member States **shall** provide that contracting entities may apply a negotiated procedure without prior call for competition **as** referred to expressly in Article 42.

Or. en

Amendment 496
Jürgen Creutzmann

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of tenders shall be **40** days from the date on which the contract notice was sent.

Amendment

The minimum time limit for the receipt of tenders shall be **47** days from the date on which the contract notice was sent.

Justification

The time limit for receipt of tenders should be extended to 47 days, which gives candidates enough time to prepare their tender and is still shorter than the current time limit (52 days).

Amendment 497
Cornelis de Jong

Proposal for a directive
Article 40 – paragraph 4

Text proposed by the Commission

Amendment

4. The contracting entity may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 33(3), (4) and (5).

deleted

Or. en

Amendment 498
Jürgen Creutzmann

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than **30** days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than **35** days from the date on which the contract notice or the invitation to confirm interest is sent and may in no case be less than 15 days.

Or. en

Justification

The time limit for receipt of requests to participate should be extended to 35 days, which gives candidates enough time to prepare their tender.

Amendment 499

Heide Rühle

Proposal for a directive

Article 42 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of requests to participate shall, **as a general rule**, be **fixed at no less than 30 days** from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.

Amendment

The minimum time limit for the receipt of requests to participate shall be **sufficient** from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.

Or. en

Amendment 500

Jürgen Creutzmann

Proposal for a directive

Article 42 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than **30** days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.

Amendment

The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than **35** days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest is sent and may in no case be less than 15 days.

Or. en

Justification

The time limit for receipt of requests to participate should be extended to 35 days, which gives candidates enough time to prepare their tender.

Amendment 501

Marc Tarabella

Proposal for a directive

Article 42 – paragraph 2 – subparagraph 3 – point 1 (new)

Text proposed by the Commission

Amendment

(1) Contracting authorities may not confine negotiations to the prices quoted in tenders.

Or. fr

Amendment 502

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 43

Text proposed by the Commission

Amendment

Article 43

deleted

Innovation partnership

1. Member States may provide that contracting entities may apply innovation partnerships as regulated in this Directive. Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.

In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) with a view to establishing a structured partnership for the development of an innovative product,

service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting entity can decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.

3. The contract shall be awarded in accordance with the rules for a negotiated procedure with prior call for competition set out in Article 42.

In selecting candidates, contracting entities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development or of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).

4. The structure of the partnership and, in

particular the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.

Contracting entities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

Or. en

Amendment 503
Marc Tarabella

Proposal for a directive
Article 43

Text proposed by the Commission

Amendment

Article 43

deleted

Innovation partnership

1. Member States may provide that contracting entities may apply innovation partnerships as regulated in this Directive. Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.

In innovation partnerships, any economic operator may submit a request to participate in response to a call for competition in accordance with points (b) and (c) of Article 39(2) with a view to establishing a structured partnership for

the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting entity can decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.

3. The contract shall be awarded in accordance with the rules for a negotiated procedure with prior call for competition set out in Article 42.

In selecting candidates, contracting entities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development or of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).

4. The structure of the partnership and, in particular the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.

Contracting entities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

Or. fr

Amendment 504

Frank Engel, Andreas Schwab

Proposal for a directive

Article 43 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States ***may*** provide that contracting entities may apply innovation partnerships as regulated in this Directive. ***Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.***

Amendment

Member States ***shall*** provide that contracting entities may apply innovation partnerships as regulated in this Directive.

Or. fr

Amendment 505

Malcolm Harbour, Edvard Kožušník, Frank Engel, Jürgen Creutzmann

Proposal for a directive
Article 43 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States *may* provide that contracting entities may apply innovation partnerships as regulated in this Directive. ***Member States may decide not to transpose into their national law innovation partnerships or to restrict the use of it to certain types of procurement.***

Amendment

Member States ***shall*** provide that contracting entities may apply innovation partnerships as regulated in this Directive.

Or. en

Justification

The promotion of innovation partnerships is a key priority in this modernisation exercise. As such, transposition of the procedure should not be optional and, instead should be uniform across all Member States to ensure a level playing field.

Amendment 506

Malcolm Harbour, Edvard Kožušník, Frank Engel, Jürgen Creutzmann

Proposal for a directive
Article 43 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In innovation partnerships, any economic operator may submit a request to participate in response to a ***call for competition in accordance with points (b) and (c) of Article 39(2) with*** a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.

Amendment

In innovation partnerships, any economic operator may submit a request to participate in response to a ***contract notice*** with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, ***the need for which cannot be met by solutions already available on the market,*** provided that they correspond to the agreed performance levels and costs. ***The contract setting up the innovation partnership shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76(1)(a).***

Justification

This amendment improves the new innovation partnerships procedure.

Amendment 507

Frank Engel

Proposal for a directive

Article 43 – paragraph 2 - subparagraph 2 a (new) and 2 b (new)

Text proposed by the Commission

Amendment

Intellectual property rights shall be granted only for the purposes of enabling the contracting authority to build on the outcome of the preceding phases, in accordance with the aim of the partnership in the event of a change of contractor during the procedure, in order to restrict the use which may be made of those rights by the undertaking which has been replaced.

Intellectual property rights clauses shall clearly define the rights and obligations of all parties.

Or. fr

Amendment 508

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 2

Text proposed by the Commission

Amendment

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, ***possibly up to*** the manufacturing of the supply or the provision of the

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, ***which may include*** the manufacturing of the supply, or the

services. **It shall provide for** intermediate targets to be attained by the partner and provide for **payment of the** remuneration in appropriate instalments. Based on those targets, the contracting entity **can** decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it **has acquired the relevant intellectual property rights**.

provision of the services **or the completion of the works**. **The partnership shall set** intermediate targets to be attained by the partner and provide for remuneration in appropriate instalments. Based on those targets, the contracting **entity may** decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that **the contracting entity has indicated in the procurement documents under which conditions it may make use of this discretion to terminate the partnership**.

Or. en

Justification

Ibid.

Amendment 509

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The contract shall be awarded **in accordance with** the rules for a **negotiated procedure with** prior **call** for competition set out in **Article 42**.

Amendment

The contract shall be awarded **according to** the provisions laid down in subparagraphs 1(a) to 1(h) **below**:

(a) In the procurement documents, contracting authorities shall indicate which elements define the minimum requirements to be met. The indications shall be sufficiently precise so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

(b) The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice

is sent, or where a prior information notice is used as a means of calling for competition, 30 days from the date on which the invitation to confirm interests is sent. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation is sent.

(c) Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted, to improve the content to ensure that these tenders better fulfil the award criteria specified in the procurement documents.

(d) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated, are informed in writing of any changes to the technical specifications of other procurement documents other than those setting out the minimum requirements, providing sufficient time to allow such tenderers to modify and re-submit amended tenders following these changes.

(e) In accordance with Article 32, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(f) The minimum requirements and the award criteria shall not be subject to negotiations.

(g) Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a

weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 76(5), provided that:

(i) the contract award criteria set out in the contract documents or the contract notice are unaltered;

(ii) this does not include new elements which would have affected the preparation of the tenders;

(iii) this does not give rise to discrimination against any one of the tenderers.

(h) Innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated, by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority shall clearly indicate whether it will use this option.

Or. en

Justification

Key AM linking the Innovation Partnerships procedure to the competitive procedure with negotiation not otherwise used for Utilities Procurements, and allowing for marginally more negotiation, given that this is required for the types of procurement which will fall under the new procedure, which explains why only certain most important parts of Article 27 of the Main Public Procurement Directive are carried over here to ensure transparency and fairness.

Amendment 510

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

In selecting candidates, contracting entities

In selecting candidates, contracting *entities*

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shall pay particular attention to criteria concerning the **tenderers'** capacity **and experience** in the field of research and development **or** of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

shall pay particular attention to criteria concerning the **candidates'** capacity in the field of research and development **and** of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 72(2).

Or. en

Justification

Improvements to the innovation partnerships procedure making it more accessible to innovative SMEs in particular.

Amendment 511

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting **entity** that cannot be met by existing solutions. ***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).***

Amendment

Only those economic operators invited by the contracting **entity** following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting **entity** that cannot be met by existing solutions.

Or. en

Justification

Award basis is already mentioned in previous AMs on innovation partnerships.

Amendment 512

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive
Article 43 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The structure of the partnership and, in particular the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value **and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.**

Amendment

The **contracting entity shall ensure that the** structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The **estimated** value of **supplies, services or works shall not be disproportionate in relation to the investment required for their development.**

Or. en

Justification

This AM ensures that the use of innovation partnerships is appropriate to the core objective behind this new procedure and that they deliver value for money.

Amendment 513
Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive
Article 43 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Contracting entities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

Amendment

deleted

Or. en

Justification

This concern is already covered in a previous Amendment on innovation partnerships

Amendment 514
Marc Tarabella

Proposal for a directive
Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

Contracting authorities may not use the negotiated procedure without publication to confine negotiations to the price of the works, supplies and services. Contracting entities may use a negotiated procedure without prior call for competition in the following cases:

Or. fr

Amendment 515
Sergio Gaetano Cofferati

Proposal for a directive
Article 44 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 516
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 44 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) where the aim of the procurement is the creation or obtention of a work of art;

(c) when for artistic reasons the contract may be awarded only to a particular economic operator;

Or. en

Justification

Limiting use of the negotiated procedure without prior publication only to work of art seems to be too narrow approach. Public contract in question may not refer to work of art but without a doubt have artistic nature (i.e. artistic performance, concert).

Amendment 517

Sergio Gaetano Cofferati

Proposal for a directive

Article 44 – paragraph 1 – point d – point i

Text proposed by the Commission

Amendment

(i) the absence of competition for technical reasons;

deleted

Or. it

Amendment 518

Heide Rühle

Proposal for a directive

Article 44 – paragraph 1 – point d – point i

Text proposed by the Commission

Amendment

(i) the absence of competition for technical reasons;

(i) the absence of competition for technical *or legal* reasons;

Or. en

Amendment 519
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 44 – paragraph 1 – point d – point i

Text proposed by the Commission

(i) the absence of competition for technical reasons;

Amendment

(i) the absence of competition for technical ***or legal*** reasons;

Or. en

Amendment 520
Peter Simon

Proposal for a directive
Article 44 – paragraph 1 – point d – point i

Text proposed by the Commission

i) the absence of competition for technical reasons;

Amendment

i) the absence of competition for ***legal or*** technical reasons;

Or. de

Amendment 521
Heide Rühle

Proposal for a directive
Article 44 – paragraph 1 – point d – paragraph 1

Text proposed by the Commission

This exception only applies when ***no reasonable alternative or substitute exists and*** the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Amendment

This exception only applies when the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Or. en

Amendment 522
Evelyne Gebhardt

Proposal for a directive
Article 44 – paragraph 1 – point d – paragraph 1

Text proposed by the Commission

This exception only applies when ***no reasonable alternative or substitute exists*** and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Amendment

This exception only applies when the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Or. de

Amendment 523
Marc Tarabella

Proposal for a directive
Article 44 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where an economic operator takes the initiative to offer a contracting entity an innovation partnership with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.

Or. fr

Amendment 524
Heide Rühle

Proposal for a directive
Article 44 – paragraph 1 – point e

Text proposed by the Commission

(e) insofar as is strictly necessary where, for reasons of extreme urgency **brought about by force majeure**, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;

Amendment

(e) insofar as is strictly necessary where, for reasons of extreme urgency **and which has not been foreseeable by the contracting entity**, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;

Or. en

Amendment 525

Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 44 – paragraph 1 – point e

Text proposed by the Commission

(e) insofar as is strictly necessary where, for reasons of extreme urgency **brought about by force majeure**, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;

Amendment

(e) insofar as is strictly necessary where, for reasons of extreme urgency, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;

Or. en

Justification

To limit extreme urgency to force majeure would be too narrow approach.

Amendment 526

Peter Simon

Proposal for a directive
Article 44 – paragraph 1 – point e

Text proposed by the Commission

(e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by *force majeure*, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;

Amendment

(e) insofar as is strictly necessary where, for reasons of extreme urgency brought about by *events which the contracting authority could not have foreseen*, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting entity;

Or. de

Amendment 527
Tiziano Motti

Proposal for a directive
Article 44 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

(f) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; *for additional works or services which were not included in the project initially awarded or in the contract first concluded but have, through unforeseen circumstances, become necessary to the performance of the contract, on condition that the award is made to the contractor or service provider*

executing the original contract:

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

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

Or. en

Justification

The current Utilities Directive provides for the inclusion of “additional works or services” within the list of the cases in which contracting entities may use a procedure without prior call for competition. This condition maintains great importance for contracting entities so that there are no reasons to remove it from the text of the new Directive. The derogation provided for in the new Article 82(6) of the proposal is not - in substance - equivalent to the original provision (current Article 40(3)(f)), its wording does not cover exactly the same circumstances.

Amendment 528

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 44 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

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

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

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

Or. en

Justification

The current Utilities Directive provides for the inclusion of “additional works or services” within the list of the cases in which contracting entities may use a procedure without prior call for competition. This condition maintains great importance for contracting entities so that there are no reasons to remove it from the text of the new Directive. The derogation provided for in the new Article 82(6) of the proposal is not - in substance - equivalent to the original provision (current Article 40(3)(f)), its wording does not cover exactly the same circumstances.

Amendment 529

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 44 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

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

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

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

Or. en

Justification

The current Utilities Directive provides for the inclusion of additional works or services within the list of the cases in which contracting entities may use a procedure without prior call for competition. This condition maintains great importance for contracting entities so that there are no reasons to remove it from the text of the new Directive. The derogation provided for in the new Article 82(6) of the proposal is not equivalent to the original provision.

Amendment 530 **Jürgen Creutzmann**

Proposal for a directive **Article 44 – paragraph 1 – point j**

Text proposed by the Commission

(j) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up its business activities or the liquidators in an insolvency procedure, ***an arrangement with creditors*** or a similar procedure under national laws or regulations;

Amendment

(j) for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up its business activities or the liquidators in an insolvency procedure or a similar procedure under national laws or regulations;

Or. en

Justification

The common situation where an economic operator has entered into an arrangement with creditors must not be considered as a ground for exclusion by itself.

Amendment 531 **Heide Rühle**

Proposal for a directive **Article 44 – paragraph 2 – point a**

Text proposed by the Commission

(a) it is irregular or unacceptable, ***and***

Amendment

(a) it is irregular or unacceptable, ***or***

Or. en

Amendment 532
Sergio Gaetano Cofferati

Proposal for a directive
Article 44 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

If a contracting body decides, under the provisions of this Article, to make use of the negotiated procedure without prior publication, it must provide the supervisory body in Article 93 with a detailed report justifying this choice and containing the tender documents and related information, and, if it should choose to resort to a negotiated procedure without prior publication based on point (a) of paragraph 1, the tender documents from the previous call to tender.

Or. it

Amendment 533
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 45 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, ***in particular with regard to price and, where appropriate, the quantities envisaged.***

A framework agreement means an agreement between one or more contracting entities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period.

Or. en

Justification

Contracting authorities shall be free to regulate framework agreements falling within the

scope of application of the Utilities Directive, provided that they apply the procedures provided for in this Directive. The proposed provision mirrors the discipline of framework agreements provided for by the Classic Directive and shall be rejected, as it runs contrary to the rationale of the Utilities Directive, in so far as the latter aims at submitting procurement by entities operating in the sectors concerned to a specific regime, more flexible than the one provided for by the Classic Directive.

Amendment 534

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement. ***deleted***

Or. en

Amendment 535

Tiziano Motti

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement. ***deleted***

Or. en

Justification

Contracting authorities shall be free to regulate framework agreements falling within the scope of application of the Utilities Directive, provided that they apply the procedures provided for in this Directive. The proposed provision mirrors the discipline of framework agreements provided for by the Classic Directive and shall be rejected, as it runs contrary to the rationale of the Utilities Directive, in so far as the latter aims at submitting procurement

by entities operating in the sectors concerned to a specific regime, more flexible than the one provided for by the Classic Directive.

Amendment 536

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement. *deleted*

Or. en

Justification

Contracting authorities shall be free to regulate framework agreements falling within the scope of application of the Utilities Directive, provided that they apply the procedures provided for in this Directive.

Amendment 537

Heide Rühle

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The term of a framework agreement shall not exceed **four** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

The term of a framework agreement shall not exceed **six** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement. ***The term of a framework agreement regarding the maintenance is based on the lifecycle of the work or supply.***

Or. en

Justification

To solve problems like the maintenance contracts for example of elevators.

Amendment 538

Frank Engel, Constance Le Grip

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed four years, save in ***exceptional cases duly justified, in particular by the subject of the framework agreement.***

Amendment

The term of a framework agreement shall not exceed four years, save in cases ***where it concerns work that will take longer than four years to carry out or where a longer period is justified by the need for economic operators to make investments for which the amortisation period is longer than four years or which are linked to the recruitment of suitable staff to perform the contract or the training of staff to perform the contract.***

Or. fr

Amendment 539

Lara Comi

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed four years, ***save in exceptional cases duly justified, in particular by the subject of the framework agreement.***

Amendment

The term of a framework agreement shall not exceed four years, ***unless, due to the specific nature of the subject of the agreement, a longer term needs to be established.***

Or. it

Amendment 540
Jürgen Creutzmann

Proposal for a directive
Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed **four** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Amendment

The term of a framework agreement shall not exceed **six** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Or. en

Justification

The duration of framework agreements should be limited in order to enhance competition. However, given the fact that the current directives do not include any limitation, a period of four years seems too short and would reduce incentives for tenderers, in particular SMEs, to participate in a public tender, as they would have to shoulder the administrative burden of re-applying for the tender after a short period of time.

Amendment 541
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 45 – paragraph 2

Text proposed by the Commission

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.

Those procedures may be applied only between those contracting entities clearly identified for this purpose in the call for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender and those economic operators originally party to the framework agreement.

Amendment

deleted

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Or. en

Amendment 542

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive Article 45 – paragraph 2

Text proposed by the Commission

Amendment

2. *Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.*

deleted

Those procedures may be applied only between those contracting entities clearly identified for this purpose in the call for competition, in the invitation to confirm interest or, where a notice on the existence of a qualification system is used as a means of calling for competition, in the invitation to tender and those economic operators originally party to the framework agreement.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort

competition.

Or. en

Justification

The proposed provision mirrors the discipline of framework agreements provided for by the Classic Directive and shall be rejected, as it runs contrary to the rationale of the Utilities Directive, in so far as the latter aims at submitting procurement by entities operating in the sectors concerned to a specific regime, more flexible than the one provided for by the Classic Directive.

Amendment 543

Pablo Arias Echeverría

Proposal for a directive

Article 45 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Amendment

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition, ***and must provide a justification for the introduction into the specifications of relevant clauses to ensure that there is clarity regarding their interpretation.***

Or. es

Amendment 544

Heide Rühle

Proposal for a directive

Article 45 – paragraph 3

Text proposed by the Commission

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the

Amendment

deleted

framework agreement.

For the award of those contracts, contracting entities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Or. en

Justification

The purpose of this revision was to simplify the procedure and create more legal clarity, the current provision is much simpler (see Article 14 of 2004/17/EC) and there was no reason provided to change it.

Amendment 545

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 45 – paragraph 3

Text proposed by the Commission

Amendment

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

deleted

For the award of those contracts, contracting entities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Or. en

Amendment 546

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 45 – paragraph 3

Text proposed by the Commission

Amendment

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. *deleted*

For the award of those contracts, contracting entities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Or. en

Amendment 547
Heide Rühle

Proposal for a directive
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways: *deleted*

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework

agreement.

Or. en

Justification

The purpose of this revision was to simplify the procedure and create more legal clarity, the current provision is much simpler (see Article 14 of 2004/17/EC) and there was no reason provided to change it.

Amendment 548

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

**Proposal for a directive
Article 45 – paragraph 4**

Text proposed by the Commission

Amendment

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways: *deleted*

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

Or. en

Amendment 549
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways: *deleted*

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

Or. en

Amendment 550
Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 45 – paragraph 5

Text proposed by the Commission

Amendment

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated *deleted*

terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

(a) for every contract to be awarded, contracting entities shall consult in writing the economic operators capable of performing the contract;

(b) contracting entities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Or. en

Amendment 551

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive Article 45 – paragraph 5

Text proposed by the Commission

Amendment

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

deleted

(a) for every contract to be awarded, contracting entities shall consult in writing the economic operators capable of performing the contract;

(b) contracting entities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Or. en

Amendment 552

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 45 – paragraph 5

Text proposed by the Commission

Amendment

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

deleted

(a) for every contract to be awarded, contracting entities shall consult in writing the economic operators capable of performing the contract;

(b) contracting entities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting entities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Or. en

Amendment 553

Pablo Arias Echeverría

Proposal for a directive

Article 45 – paragraph 5 – point b

Text proposed by the Commission

(b) contracting entities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

Amendment

(b) contracting entities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders. ***If tenderers are required to attend site visits before being able to submit a tender, the time limit shall be greater than 15 working days.***

Or. es

Amendment 554

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 45 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Contracting entities have the possibility to add new economic operators to the framework agreement during the term of the contract, provided that these economic operators meet all the criteria set in this article, and did not exist yet at the time of the conclusion of the agreement.

Contracting entities have the possibility to remove economic operators from the framework agreement during the term of the contract, where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under the agreement.

Or. en

Amendment 555
Cornelis de Jong

Proposal for a directive
Article 46 – paragraph 1

Text proposed by the Commission

Amendment

1. For commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting entities, ***they*** may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

1. For commonly used purchases the characteristics of which, as generally available on the market ***and at a more or less standardised quality***, meet the requirements of the contracting entities, ***contracting entities*** may use a dynamic purchasing system. ***This system cannot be used for the purchase of services and complex or non standardised products.*** The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

Amendment 556

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 46 – paragraph 6 – introductory part

Text proposed by the Commission

6. Contracting entities shall indicate the duration of the dynamic purchasing system in the call for competition. ***They shall notify the Commission of any change in duration, using the following standard forms:***

Amendment

6. Contracting entities shall indicate the duration of the dynamic purchasing system in the call for competition.

Or. en

Amendment 557

Cornelis de Jong

Proposal for a directive

Article 46 – paragraph 6 – point a

Text proposed by the Commission

(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

Amendment

deleted

Or. en

Amendment 558

Cornelis de Jong

Proposal for a directive

Article 46 – paragraph 6 – point b

Text proposed by the Commission

(b) where the system is terminated, a

Amendment

deleted

contract award notice referred to in Article 64.

Or. en

Amendment 559
Heide Rühle

Proposal for a directive
Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Only for standardised services and supplies contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. en

Amendment 560
Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Jürgen Creutzmann

Proposal for a directive
Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Where fully standardised supplies and services are involved, contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. de

Justification

Electronic auctions may be effective where fully standardised supplies and services are involved, but they are as a rule unsuitable, or even counterproductive, in cases where

complex award procedures are being conducted. They are inherently unsuitable in the context of procedures for the award of works contracts.

Amendment 561
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.
Electronic auctions can only be used for commonly used purchases of goods that are generally available on the market at a more or less standardised quality. They cannot be used for the purchase of services or complex or non standardised products.

Or. en

Amendment 562
Marc Tarabella

Proposal for a directive
Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting entities may use electronic auctions ***solely for the purchase of standardised goods***, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. fr

Amendment 563
Barbara Weiler

Proposal for a directive
Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting entities may use electronic auctions in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.
The use of electronic auctions shall be restricted to procurement procedures for fully standardised supplies and services.

Or. de

Amendment 564
Lara Comi

Proposal for a directive
Article 47 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

This article does not apply to public works contracts.

Or. it

Amendment 565
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 47 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting

The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender carried out in accordance with the weighting provided for in the first subparagraph of Article 76(5).

provided for in the first subparagraph of Article 76(5).

Or. en

Amendment 566

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 48 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States may **render** the use of electronic catalogues **mandatory** in connection with **certain types of procurement**.

Amendment

Member States may **provide for** the use of electronic catalogues in connection with **service and supply contracts**. **This article does not apply to public works contracts**.

Or. it

Amendment 567

Malgorzata Handzlik, Rafal Trzaskowski, Róza Gräfin von Thun und Hohenstein

Proposal for a directive

Article 49 – paragraph 1

Text proposed by the Commission

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

Amendment

1. **Member States** may **stipulate that contracting entities** may purchase works, supplies and/or services from or through a central purchasing body.

Or. en

Justification

Member States should have a possibility to allow contracting entities use services of central purchasing body, but they should not be obligated to do so. Central purchasing is one of the procurement methods that leads to aggregation of demand which could be unfavourable for SMEs. Thus, Member States should be allowed to decide whether to develop centralised procurement methods or not, depending on their national policy.

Amendment 568

Malgorzata Handzlik, Rafal Trzaskowski, Róza Gräfin von Thun und Hohenstein

Proposal for a directive

Article 49 – paragraph 2

Text proposed by the Commission

2. Member States **shall** provide for the possibility for contracting **entities** to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

Amendment

2. Member States **may also** provide for the possibility for contracting **authorities** to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

Or. en

Justification

Member States should have a possibility to allow contracting authorities use services of central purchasing body established in another Member State, but they should not be obligated to do so. In some Member States option provided for in art. 35.2 of the Commission's proposal may cause problems in national legislation (i.e. it could not be possible for contracting authorities to be subject of legal provisions of other Member State, in particular with regard to regulations governing review procedures).

Amendment 569

Heide Rühle

Proposal for a directive

Article 50

Text proposed by the Commission

Article 50

Ancillary purchasing activities

The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.

Amendment

deleted

Or. en

Amendment 570
Heide Rühle

Proposal for a directive
Article 51 – paragraph 1

Text proposed by the Commission

1. **One** or more contracting entities may agree to perform certain specific procurements jointly.

Amendment

1. **Two** or more contracting entities may agree to perform certain specific procurements jointly.

Or. en

Amendment 571
Heide Rühle

Proposal for a directive
Article 51 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Where **one contracting entity alone conducts** the procurement **procedures concerned** in **all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that** contracting entity shall **have sole responsibility** for fulfilling the obligations pursuant to this Directive.

Amendment

Where the **conduct of a** procurement **procedure** in its **entirety is carried out jointly by** the contracting **entities concerned, they shall be jointly responsible** for fulfilling the obligations pursuant to this Directive. **Contracting entities shall be deemed to conduct an award procedure jointly where one contracting entity manages the procedure on both its own behalf and on that of the other contracting entities concerned.**

Or. en

Amendment 572
Heide Rühle

Proposal for a directive
Article 51 – paragraph 2 – subparagraph 2

Text proposed by the Commission

However, where the conduct of the

Amendment

However, where the conduct of the

procurement procedures **and the performance of the ensuing contracts** is carried out by **more than one of the participating** contracting entities, each shall **continue to** be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

procurement procedures is **not in its entirety** carried out **jointly** by the contracting entities **concerned**, each shall be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

Or. en

Amendment 573

Raffaele Baldassarre

Proposal for a directive

Article 51 – paragraph 2 – subparagraph 2

Text proposed by the Commission

However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting entities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

Amendment

However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting entities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts. ***The Member States shall, in accordance with their own national law and in compliance with Community law, lay down the conditions governing the implementation of this article.***

Or. it

Amendment 574

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 52

Text proposed by the Commission

Article 52

Amendment

deleted

Joint procurement between contracting entities from different Member States

1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, contracting entities from different Member States may jointly award contracts by using one of the means described in this Article.

2. Several contracting entities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

3. Several contracting entities from different Member States may jointly award a contract. In that case, the participating contracting entities shall conclude an agreement that determines

(a) which national provisions shall apply to the procurement procedure;

(b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

When determining the applicable national law in accordance with point (a), contracting entities may choose the national provisions of any Member State in which at least one of the participating entities is located.

4. Where several contracting entities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) No° 1082/2006 of the European Parliament and of the

Council¹ or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:

(a) the national provisions of the Member State where the joint legal entity has its registered office;

(b) the national provisions of the Member State where the joint legal entity is carrying out its activities.

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

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

(a) where the procedure is conducted or managed by one participating contracting entity on behalf of the others, the national provisions of the Member State of that contracting entity shall apply;

(b) where the procedure is not conducted or managed by one participating contracting entity on behalf of the others, and

(i) concerns a works contract, contracting entities shall apply the national provisions of the Member State where most of the works are located;

(ii) concerns a service or supply contract, contracting entities shall apply the

¹ OJ L 210 of 31.7.2006, p. 19

national provisions of the Member State where the major part of the services or supplies is provided;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting entities shall apply the national provisions of the Member State of the contracting entity which bears the biggest share of the costs.

6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting entities from different Member States shall be determined following the following rules:

(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply;

(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting entities shall apply the national provisions of the Member State where the legal entity has its registered office.

7. One or more contracting entities may award individual contracts under a framework agreement concluded by or jointly with a contracting entity located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting entity or entities to award the individual contracts.

8. Decisions on the award of contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.

9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 92/13/EEC¹ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting entities established on their territory participating in the relevant cross-border public procurement procedure.

Or. en

Amendment 575

Małgorzata Handzlik, Rafał Trzaskowski, Róża Gräfin von Thun und Hohenstein

Proposal for a directive Article 52 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, ***contracting entities from different*** Member States may ***jointly*** award contracts ***by using one*** of the ***means described in this Article.***

Amendment

1. Without prejudice to Title I, Chapter III, Section 2, Subsection 2: Special relations, Member States may ***stipulate that contracting entities may*** award ***public*** contracts ***jointly with contracting entities from other Member States if:***

(a) the joint award of a ***public contract is justified due to cross-border nature of the contract***

or;

(b) the public contract is co-financed by contracting authorities from different Member States

or;

¹ OJ L 76, 23.03.1992, p. 14.

(c) the public contract is of innovative nature.

Or. en

Justification

Member States should have a possibility to decide whether contracting authority may award a contract jointly with contracting authorities from other Member States. Moreover, there should be concrete conditions under which a contract may be awarded jointly with contracting authorities from other Member States.

Amendment 576

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 52 – paragraph 2

Text proposed by the Commission

Amendment

2. Several contracting entities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

deleted

Or. en

Amendment 577

Małgorzata Handzlik, Rafał Trzaskowski, Róza Gräfin von Thun und Hohenstein

Proposal for a directive

Article 52 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Several contracting entities from different Member States may jointly award a contract. In that case, the participating contracting entities shall conclude an

In a case referred to in the paragraph 1, the participating contracting entities shall conclude an agreement that determines

agreement that determines

Or. en

Amendment 578

Andreas Schwab

Proposal for a directive

Article 52 – paragraph 3 – subparagraph 2

Text proposed by the Commission

When determining the applicable national law in accordance with point (a), contracting entities **may** choose the national provisions of any Member State in which at least one of the participating entities is located.

Amendment

When determining the applicable national law in accordance with point (a), contracting entities **must** choose the national provisions of any Member State in which at least one of the participating entities is located.

Or. de

Justification

The parties' options in terms of choosing the applicable national law should be linked to the substantive legal provisions governing the contract.

Amendment 579

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 52 – paragraph 5

Text proposed by the Commission

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

(a) where the procedure is conducted or managed by one participating contracting entity on behalf of the others, the national

Amendment

deleted

provisions of the Member State of that contracting entity shall apply;

(b) where the procedure is not conducted or managed by one participating contracting entity on behalf of the others, and

(i) concerns a works contract, contracting entities shall apply the national provisions of the Member State where most of the works are located;

(ii) concerns a service or supply contract, contracting entities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting entities shall apply the national provisions of the Member State of the contracting entity which bears the biggest share of the costs.

Or. en

Justification

It is sufficient that contracting authorities shall agree on the applicable national procurement rules. Paragraph 5 is not necessary. Deletion of this paragraph will simplify the Article.

Amendment 580
Heide Rühle

Proposal for a directive
Article 52 – paragraph 5 – point c

Text proposed by the Commission

Amendment

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting entities shall apply the national provisions of the Member State of the contracting entity which bears the biggest share of the costs.

deleted

Amendment 581

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 52 – paragraph 6

Text proposed by the Commission

Amendment

6. In the absence of an agreement *deleted* determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting entities from different Member States shall be determined following the following rules:

(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply;

(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting entities shall apply the national provisions of the Member State where the legal entity has its registered office.

Or. en

Justification

It is sufficient that contracting authorities shall agree on the applicable national procurement rules. Paragraph 6 is not necessary. Deletion of this paragraph will simplify the Article.

Amendment 582

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 52 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. Several contracting entities from different Member States may purchase works, supplies and/or services from or through a central purchasing body located in another Member State, if those Member States provided for the possibility referred to in Article 49 paragraph 2 and all the conditions referred to in the paragraph 1 are fulfilled. In that case, parties shall conclude an agreement that determines which national provisions shall apply to the procurement procedure.

Or. en

Amendment 583

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 52 – paragraph 7

Text proposed by the Commission

Amendment

7. One or more contracting entities may award individual contracts under a framework agreement concluded by or jointly with a contracting entity located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting entity or entities to award the individual contracts.

7. Member States may stipulate that one or more contracting entities may award individual contracts under a framework agreement concluded by or jointly with a contracting entity located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting entity or entities to award the individual contracts.

Or. en

Amendment 584

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

**Proposal for a directive
Article 52 – paragraph 9**

Text proposed by the Commission

Amendment

9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 92/13/EEC⁴⁷ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting entities established on their territory participating in the relevant cross-border public procurement procedure.

deleted

Or. en

Justification

Such provision may cause problems in practice. It is not clear how Member States should ensure that decisions of review bodies (which are not necessarily of judicial nature) established in other Member States are fully executed in their domestic legal order.

Amendment 585

Heide Rühle

**Proposal for a directive
Article 53 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Amendment

Before launching a procurement procedure, contracting entities may conduct market consultations in order to assess the structure, capability and capacity of the market **and** to inform economic operators of their procurement plans and requirements.

Before launching a procurement procedure, contracting entities may conduct market consultations in order to assess the structure, capability and capacity of the market **and/or** to inform economic operators of their procurement plans and requirements.

Or. en

Amendment 586
Heide Rühle

Proposal for a directive
Article 53 – paragraph 1 – subparagraph 2

Text proposed by the Commission

For this purpose, contracting entities may seek or accept advice from administrative support structures or from third parties or market participants, ***provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.***

Amendment

For this purpose, contracting entities may seek or accept advice from administrative support structures or from third parties or market participants.

Or. en

Justification

Redundant

Amendment 587
Philippe Juvin

Proposal for a directive
Article 53 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such measures shall include the communication to the other candidates and tenderers of any ***relevant*** information ***exchanged*** in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Amendment

Such measures shall include the communication to the other candidates and tenderers of any information ***provided by the contracting entity*** in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Justification

Under the prior market consultation procedure, tenderers should only be able to receive information supplied by the contracting entity, and not 'exchanged information', possibly including elements of tenders, which would discriminate against tenderers participating in that procedure.

Amendment 588
Frank Engel

Proposal for a directive
Article 53 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Amendment

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. ***Contracting authorities shall either be required***

(i) to clarify in their invitation to participate in a consultation what information will be considered relevant and thus may be shared with all potential bidders or

(ii) to set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Amendment 589
Jürgen Creutzmann

Proposal for a directive
Article 53 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Amendment

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. ***Contracting authorities shall either***

(i) clarify in their invitation to participate in a consultation what information will be considered relevant and thus may be shared with all potential bidders or

(ii) set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Justification

There is a potential practical difficulty in identifying and agreeing with contracting authorities in each case what constitutes “relevant information” to be shared in a preliminary market consultation and what should be kept confidential. Allowing contracting authorities to clearly set out either information that could become relevant for sharing or

procedures to protect confidential information will bring more clarity to the different parties and safeguard the interests of economic operators.

Amendment 590
Heide Rühle

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The technical specifications ***as defined in point 1 of Annex VIII*** shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

Amendment

The technical specifications shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***and shall be linked to the subject matter of the contract.***

Or. en

Amendment 591
Heide Rühle

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle ***as referred to in point (22) of Article 2.***

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle.

Or. en

Amendment 592
Marc Tarabella

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *as* referred to in *point (22)* of Article 2.

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *and socially sustainable production process* referred to in *points (22), (22a) and (22b)* of Article 2.

Or. fr

Amendment 593
Jürgen Creutzmann

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, *provided that they are linked to the subject-matter of the contract and proportionate to the value and objectives of the contract.*

Or. en

Justification

Candidates cannot be required to prove things on which they do not have any access, competency or responsibility up to the whole supply chain. For these reasons, technical specifications must remain strictly linked to the subject-matter of the contract and the requirements must be proportionate to the value and objectives of the contract.

Amendment 594
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 54 – paragraph 1 – subparagraph 2 point a, b and c (new)

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2. ***The following shall also be taken into account as technical specifications:***

(a) social criteria, such as respect for the right to decent working conditions, compliance with health and safety rules, collective bargaining, gender equality (e.g. equal pay, work-life balance), social integration, including employment opportunities for disabled, disadvantaged or vulnerable workers (such as long-term unemployed persons, Roma, migrants or young and older workers), access to vocational training and user involvement and consultation;

(b) social considerations relating to the external social costs directly linked to the life cycle, such as the impact of production on the surrounding environment and adjacent communities;

(c) for service contracts and contracts involving the design of works, the organisation, qualifications and experience of the staff assigned to performing the contract.

Or. de

Amendment 595

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 54 – paragraph 1 – subparagraph 4

Text proposed by the Commission

For all procurement, the subject of which is

Amendment

For all procurement, the subject of which is

intended for use by persons, whether general public or staff of the contracting entity, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

intended for use by persons, whether general public or staff of the contracting entity, those technical specifications shall, except in **exceptional**, duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Or. es

Amendment 596
Heide Rühle

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

Amendment

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria **for persons with disabilities or design for all users** are concerned, be defined by reference thereto.

Or. en

Amendment 597
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

Amendment

Where mandatory accessibility, **environmental or social** standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility, **environmental or social** criteria are concerned, be defined by reference thereto.

Or. en

Amendment 598

Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive

Article 54 – paragraph 1 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

For all procurement, technical specifications shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of data protection law at the time of the design of the processing of personal data (data protection by design).

Or. en

Amendment 599

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 54 – paragraph 1 – point 1 (new)

Text proposed by the Commission

Amendment

Obligations relating to social and employment conditions, such as health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and the international labour law provisions listed in Annex XIV, which apply in the place where the work, service or supply is performed shall be clearly set out by contracting authorities in the technical specifications as part of the mandatory requirements governing the award of the contract.

Or. de

Amendment 600
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 54 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Technical specifications may also include requirements relating to:

a) Employment conditions, organisation, qualification and experience of staff assigned to performing the contract in question;

Or. en

Amendment 601
Heide Rühle

Proposal for a directive
Article 54 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

(a) in terms of performance or functional requirements, including ***social and*** environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

Or. en

Amendment 602
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 54 – paragraph 3 – point a

Text proposed by the Commission

Amendment

a) in terms of performance or functional requirements, including environmental

(a) in terms of performance or functional requirements, including environmental ***and***

characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting *entities* to award the contract;

social characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting *authorities* to award the contract, *including in accordance with the requirements concerning the life-cycle characteristics of the requested works, supplies or services*;

Or. de

Amendment 603

Philippe Juvin

Proposal for a directive

Article 54 – paragraph 3 – point a

Text proposed by the Commission

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

Amendment

(a) in terms of performance or functional requirements, including environmental *and safety* characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract;

Or. fr

Justification

The technical specifications of the tender should also include safety characteristics, on account of the risks and liabilities incurred.

Amendment 604

Heide Rühle

Proposal for a directive

Article 54 – paragraph 3 – point b

Text proposed by the Commission

(b) by reference to technical specifications

Amendment

(b) by reference to technical specifications

and, in order of preference, to national standards transposing European standards, European **technical approvals**, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

and, in order of preference, to national standards transposing European standards, European **Technical Assessments**, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when **any of** those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

Or. en

Amendment 605

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 54 – paragraph 3 – point b

Text proposed by the Commission

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

Amendment

(b) by reference to technical specifications and, in order of preference, **and without discrimination as to development method, to** national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

Or. en

Justification

Technical specifications should be non-discriminatory and technology neutral. These fundamental principles should apply equally to the use of standards and specifications in procurement. Non-discriminatory, technology neutral specifications require economic operators to compete to produce the best solutions, which drives innovation and economic growth. Technology neutrality also ensures that authorities can pick from the widest range of products and services, promoting best value for money.

Amendment 606 **Heide Rühle**

Proposal for a directive **Article 54 – paragraph 4**

Text proposed by the Commission

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

Amendment

4. ***When*** justified by the subject-matter of the contract, technical specifications ***may*** refer to a specific make or source, or to a particular process ***which characterises the products or services***, or to trade marks, patents, types or a specific origin or production Such reference shall be accompanied by the words ‘or equivalent’.

Or. en

Amendment 607 **Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann**

Proposal for a directive **Article 54 – paragraph 4**

Text proposed by the Commission

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or ***to***

Amendment

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a

a particular process, or to trade marks, patents, types or a specific origin or production **with** the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent'.

particular process **or development or business model or method**, or to trade marks, patents, types or a specific origin or production **or location of production, as any such reference would have** the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall **systematically** be accompanied by the words "or equivalent".

Or. en

Justification

To promote innovation and economic growth, it is essential that all tenderers compete on an equal footing. Discrimination, including on technology or location of production should only be allowed in very exceptional circumstances. Any preferences, whether for certain technologies, business models, vendors or product origins, stifle innovation and competition with the effect that public bodies cannot select solutions that best match the needs of a given procurement.

Amendment 608 **Cornelis de Jong, Mikael Gustafsson**

Proposal for a directive **Article 54 – paragraph 4**

Text proposed by the Commission

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

Amendment

4. **On an exceptional basis, and only when** justified by the subject-matter of the contract, technical specifications **may** refer to a specific make or source, or a particular process, types or a specific origin or production. Such reference shall be accompanied by the words 'or equivalent'.

possible. Such reference shall be accompanied by the words ‘or equivalent’.

Or. en

Amendment 609
Philippe Juvin

Proposal for a directive
Article 54 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products.

Such reference shall be permitted on an exceptional basis:

(a) where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent';

(b) where this is warranted by the contract and the reference relates to the production or process location on European Union territory.

Or. fr

Justification

Where warranted by the contract, providing details of production or process location on

European Union territory must remain possible.

Amendment 610

Heide Rühle

Proposal for a directive

Article 54 – paragraph 5

Text proposed by the Commission

5. Where a contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender, by *whatever* appropriate means, including the means of proof referred to in Article 56, that the solutions which it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Amendment

5. Where a contracting entity uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the ground that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender, by appropriate means, including the means of proof referred to in Article 56, that the solutions which it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Or. en

Amendment 611

Heide Rühle

Proposal for a directive

Article 54 – paragraph 6 – subparagraph 2

Text proposed by the Commission

In its tender, the tenderer shall prove by *any* appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

Amendment

In its tender, the tenderer shall prove by appropriate means including those referred to in Article 56, that the supplies, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

Or. en

Amendment 612
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 54 – paragraph 6 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Contracting authorities must be able to control and follow up that the requirements are fulfilled, during the tendering process as well as during the performance of the contract.

Or. en

Amendment 613
Heide Rühle

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Where contracting entities lay down environmental, social or other ***characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 54 paragraph 3***, they may require that ***those*** works, supplies or ***services bear a specific label***, provided that all of the following conditions are fulfilled:

Where contracting entities lay down ***in the technical specifications, the award criteria or the contract performance clauses***, environmental, social or other requirements ***or criteria*** they may require ***a specific label, as means of proof*** that ***these*** works, ***services or supplies correspond to such requirements or criteria*** provided that all of the following conditions are fulfilled:

Or. en

Amendment 614
Heide Rühle

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the requirements ***for*** the label only

(a) the requirements ***to be met in order to***

concern *characteristics* which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;

obtain the label only concern *criteria* which are linked to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

Amendment 615
Frank Engel

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the requirements for the label *only concern characteristics which are linked to the subject-matter of the contract and* are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;

(a) the requirements for the label are appropriate to define the characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. fr

Amendment 616
Heide Rühle

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the requirements *for* the label are *drawn up on the basis of scientific information or* based on *other* objectively verifiable and non-discriminatory criteria;

(b) the requirements *to be met in order to obtain* the label are based on objectively verifiable and non-discriminatory criteria;

Or. en

Amendment 617
Heide Rühle

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including **government bodies**, consumers, manufacturers, distributors and environmental organisations may participate,

Amendment

(c) the labels are established in an open and transparent procedure in which all **relevant** stakeholders, including consumers, manufacturers, **trade unions**, distributors and environmental **and social** organisations **have a substantial role**. **Government bodies** may participate **but are not obligatory**;

Or. en

Amendment 618

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations may participate;

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors, and environmental **and social** organisations may participate;

Or. es

Amendment 619

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies,

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies,

consumers, manufacturers, distributors and environmental organisations may participate,

consumers, **trade unions**, manufacturers, distributors and environmental organisations may participate,

Or. en

Amendment 620

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations may participate,

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, **trade unions**, distributors and environmental organisations may participate,

Or. en

Amendment 621

Heide Rühle

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(e) the **criteria of** the label are set by a third party which is independent from the economic operator applying for the label.

Amendment

(e) the **requirements to be met in order to obtain** the label are set by a third party which is independent from the economic operator applying for the label.

Or. en

Amendment 622

Heide Rühle

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. ***For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.***

Amendment

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the ***specific*** label indicated by the contracting entities. ***Contracting entities shall accept other appropriate means of proving such requirements, which may include a technical dossier of the manufacturer where the economic operator concerned has no access to the label, or no possibility of obtaining it within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned. In order not to discriminate those tenderers who invest time and money for certificates, the burden for providing equivalence with a specific label should be placed on the tenderer claiming equivalence.***

Or. en

Justification

In order not to discriminate those tenderer who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.

Amendment 623

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or

Amendment

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or

other appropriate means of proof.

other appropriate means of proof.
Precedence shall be given to labels, technical dossiers or other means of proof which have been developed, certified or verified with the involvement of governmental bodies, or environmental or social organisations.

Or. es

Amendment 624
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. ***For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.***

Amendment

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities.

Or. en

Amendment 625
Raffaele Baldassarre

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting entities requiring a specific label shall accept all equivalent labels, ***i.e. those based on the same assessment criteria and measurement methods***, that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a

technical dossier of the manufacturer or other appropriate means of proof.

Or. it

Amendment 626
Philippe Juvin

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting entities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting entities. For products that do not bear the label, contracting entities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

In requiring a specific label, the contracting entity shall not seek to discriminate against tenderers in the procurement procedure.

Or. fr

Justification

The use of labels in the process of laying down and applying award criteria must not result in discriminatory practices aimed at favouring some bidders over others.

Amendment 627
Frank Engel

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

It shall be the responsibility of the tenderer to prove equivalence with the

label requested.

Or. fr

Amendment 628
Heide Rühle

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.

Amendment

Contracting entities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with ***requirements or criteria set out in*** the technical specifications, ***the award criteria or the contract performance clauses.***

Or. en

Amendment 629
Heide Rühle

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where contracting entities require the submission of certificates drawn up by ***recognised bodies attesting conformity with a particular technical specification,*** certificates from equivalent other recognised bodies shall also be accepted by the contracting entities.

Amendment

Where contracting entities require the submission of certificates drawn up by a ***specific assessment body*** certificates from equivalent other recognised bodies shall also be accepted by the contracting entities.

Or. en

Amendment 630
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 56 – paragraph 2

Text proposed by the Commission

2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Amendment

deleted

Or. en

Amendment 631
Heide Rühle

Proposal for a directive
Article 56 – paragraph 2

Text proposed by the Commission

2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Amendment

2. Contracting entities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to such certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, ***provided that the lack of access is not attributable to the economic operator concerned. However in order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 632
Heide Rühle

Proposal for a directive
Article 56 – paragraph 4

Text proposed by the Commission

4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 54(6), Article 55 and paragraphs 1, 2 and 3 of this Article **to prove compliance with technical requirements**. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 96.

Amendment

4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 54(6), Article 55 and paragraphs 1, 2 and 3 of this Article. The competent authorities of the Member State of establishment **of the economic operator** shall provide this information in accordance with Article 96.

Or. en

Amendment 633
Heide Rühle

Proposal for a directive
Article 57 – paragraph 1

Text proposed by the Commission

1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through **unrestricted and** full direct access free of charge.

Amendment

1. On request from economic operators interested in obtaining a contract, contracting entities shall make available the technical specifications, **the award criteria and the contract performance clauses** regularly referred to in their supply, works or service contracts, or the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice. Those specifications shall be made available by electronic means through full direct access free of charge. **Contracting entities may ask under specific circumstances for name, address or other means to identify the tenderer.**

Or. en

Amendment 634
Heide Rühle

Proposal for a directive
Article 57 – paragraph 2

Text proposed by the Commission

2. Where the technical specifications are based on documents available by electronic means through ***unrestricted and*** full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

Amendment

2. Where the technical specifications are based on documents available by electronic means through full direct access free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

Or. en

Justification

There might be needs to prove for example the tenderers' data (name, address etc.)

Amendment 635
Heide Rühle

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities ***may*** take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Amendment

Contracting entities ***shall*** take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities ***as long as they are linked to the subject matter of the contract.***

Or. en

Amendment 636
Frank Engel, Andreas Schwab

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Amendment

Tenderers may submit variants along with a basic proposal.

Or. fr

Amendment 637
Cornelis de Jong

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities *may take account of* variants *which are submitted by a tenderer and meet the minimum requirements specified by the* contracting entities.

Amendment

Contracting entities ***shall in principle allow tenderers to submit*** variants. ***If*** the contracting entities ***do not wish to allow the submission of variants, they shall indicate this in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Without such indication, variants shall be authorised.***

Or. en

Amendment 638
Robert Rochefort

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities may *take account of* variants *which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.*

Amendment

Contracting authorities may ***prohibit tenderers from submitting*** variants.

Amendment 639

Marc Tarabella

Proposal for a directive

Article 58 – paragraph 1 – subparagraph -1

Text proposed by the Commission

Contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Amendment

A variant shall be an alternative method of design, execution or funding of the contract.

Contracting entities may take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Or. fr

Amendment 640

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. Where variants are authorised, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

deleted

Or. en

Amendment 641
Heide Rühle

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. ***Where variants are authorised, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.***

Amendment

Contracting entities shall indicate in the specifications whether or not they authorise variants and, if so, the minimum requirements to be met by the variants and any specific requirements for their presentation. ***Variants shall not be rejected without such indication.***

Or. en

Amendment 642
Frank Engel, Andreas Schwab

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities shall indicate in the specifications ***whether or not they authorise variants and, if so,*** the minimum requirements to be met by the variants and any specific requirements for their presentation. ***Where variants are authorised, they*** shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

Contracting entities shall indicate in the specifications the minimum requirements to be met by the variants and any specific requirements for their presentation. ***They*** shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. fr

Amendment 643
Robert Rochefort

Proposal for a directive
Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities shall indicate in the specifications whether or not **they authorise** variants **and, if so**, the minimum requirements to be met by the variants and any specific requirements for their presentation. **Where variants are authorised, they** shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

Contracting entities shall indicate in the specifications whether or not variants are banned. **Where no such indication is made, it shall be understood that variants are authorised.**

Where variants are not prohibited, contracting entities shall specify the minimum requirements to be met by the variants and any specific requirements for their presentation. **They** shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. fr

Amendment 644
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 58 – paragraph 2

Text proposed by the Commission

2. In procedures for awarding supply or service contracts, contracting entities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service

Amendment

deleted

contract.

Or. en

Amendment 645

Heide Rühle

Proposal for a directive

Article 58 – paragraph 2

Text proposed by the Commission

2. In procedures for awarding supply or service contracts, contracting entities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment

2. In procedures for awarding supply or service contracts, contracting entities shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Or. en

Justification

To encourage innovative products and production methods variants are one of the best instruments; their use should be encouraged and not hindered.

Amendment 646

Frank Engel, Andreas Schwab

Proposal for a directive

Article 58 – paragraph 2

Text proposed by the Commission

2. In procedures for awarding supply or service contracts, contracting entities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment

2. In procedures for awarding supply or service contracts, contracting entities shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment 647
Robert Rochefort

Proposal for a directive
Article 58 – paragraph 2

Text proposed by the Commission

2. In procedures for awarding supply or service contracts, contracting entities that have **authorised** variants **shall** not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment

2. In procedures for awarding supply or service contracts, contracting entities that have **not banned** variants **may** not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Amendment 648
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies.

Amendment

To facilitate greater access to public procurement by small and medium-sized enterprises, public contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies. ***For contracts with a value equal to and over EUR 1 000 000, contracting authorities shall provide a justification for not sub-dividing the contract into lots in the contract notice or in the invitation to confirm interest.***

Amendment 649

Cornelis de Jong

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies.

Amendment

With a view to maximising competition, and unless the subject-matter of the contract makes division on the basis of the nature of the services involved impossible, the contracting entity shall award the contract in separate lots. If the contract cannot be split into lots because its subject-matter makes division on the basis of the nature of the services involved impossible, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Or. en

Amendment 650

Marc Tarabella

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies.

Amendment

Contracts may be divided into lots. .

Or. fr

Amendment 651

Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Herbert Dorfmann

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Contracts may be subdivided into **homogenous or heterogeneous** lots. Article 13(7) applies.

Contracts may be subdivided into lots. Article 13 (7) applies.

Or. en

Justification

It seems to be sufficient to oblige contracting authorities to inform, in the contract notice or in the invitation to confirm interest, about its decision not to split contract into lots. Contracting authorities should not be required to provide specific explanations of its reasons. It is not clear what would be added value of such a requirement. The wording of second subparagraph has been adjusted for the sake of clarification.

Amendment 652

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Contracts may be subdivided into homogenous or heterogeneous lots. Article 13(7) applies.

Contracts may be subdivided into homogenous or heterogeneous lots. ***For contracts the value of which is equal to or exceeds the thresholds laid down in Article 12, the contracting entity shall provide, in the contract notice or in the invitation to confirm interest, specific clarification of its reasons relating to the decision on whether or not to divide the contract into lots.*** Article 13(7) applies.

Or. it

Amendment 653

Cornelis de Jong

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate, whether tenders are limited to one or more lots only.

deleted

Or. en

Amendment 654

Marc Tarabella

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting entities shall indicate, in the contract notice, in the invitation to confirm interest, ***or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate,*** whether ***tenders are limited to one or more lots only.***

Contracting entities shall indicate, in the contract notice ***or*** in the invitation to confirm interest, whether ***the contract is limited to one or more lots only. They shall be free to determine the number of lots, taking into account in particular the technical characteristics of the services requested, the structure of the economic sector concerned, and, where necessary, the rules applicable to given professions.***

Or. fr

Amendment 655

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Herbert Dorfmann

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting entities shall indicate, in the

Where the contracting entity limits the

contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate, ***whether tenders are limited to one or more lots only.***

possibility to tender to one or more lots it shall indicate *it* in the contract notice, in the invitation to confirm interest or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or to negotiate, or *in the procurement documents*

Or. en

Justification

It seems to be sufficient to oblige contracting authorities to inform, in the contract notice or in the invitation to confirm interest, about its decision not to split contract into lots. Contracting authorities should not be required to provide specific explanations of its reasons. It is not clear what would be added value of such a requirement. The wording of second subparagraph has been adjusted for the sake of clarification.

Amendment 656

Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen

Proposal for a directive

Article 59 – paragraph 2

Text proposed by the Commission

Amendment

2. Contracting entities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting entities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.

deleted

Or. en

Justification

Simplification of procurement rules.

Amendment 657

Marc Tarabella

**Proposal for a directive
Article 59 – paragraph 2**

Text proposed by the Commission

2. Contracting entities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting entities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots *where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.*

Amendment

2. Candidates may not submit different tenders for differing numbers of lots. Contracting entities shall limit the number of lots that may be awarded to a tenderer provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots.

Or. fr

Amendment 658

Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen

**Proposal for a directive
Article 59 – paragraph 3**

Text proposed by the Commission

3. Where more than one lot may be awarded to the same tenderer, contracting entities may provide that they will either award a contract per lot or one or more contracts, covering several or all lots.

Contracting entities shall specify in the procurement documents whether they reserve the right to make such a choice

Amendment

deleted

and, if so, which lots may be grouped together under one contract.

Contracting entities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 76 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

Or. en

Justification

Simplification of procurement rules.

Amendment 659

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

**Proposal for a directive
Article 59 – paragraph 3**

Text proposed by the Commission

Amendment

3. Where more than one lot may be awarded to the same tenderer, contracting entities may provide that they will either award a contract per lot or one or more contracts, covering several or all lots.

deleted

Contracting entities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Contracting entities shall first determine the tenders fulfilling best the award

criteria set out pursuant to Article 76 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

Or. en

Justification

This paragraph could lead to contrary of what is the aim of the proposal, namely to enable better access of SMEs to public contracts, as it may lead to aggregation of procurement, excluding therefore SMEs.

Amendment 660
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 59 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

Where more than one lot may be awarded to the same tenderer, contracting entities may provide that they will either award a contract per lot or one or more contracts, covering several or all lots.

deleted

Or. en

Amendment 661
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 59 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting entities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

deleted

Or. en

**Amendment 662
Heide Rühle**

**Proposal for a directive
Article 59 – paragraph 3 – subparagraph 3**

Text proposed by the Commission

Amendment

Contracting entities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 76 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

deleted

Or. en

**Amendment 663
Cornelis de Jong, Mikael Gustafsson**

**Proposal for a directive
Article 59 – paragraph 3 – subparagraph 3**

Text proposed by the Commission

Amendment

Contracting entities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 76 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 76 are better fulfilled with regard to all the lots covered by that contract. Contracting entities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory. ***deleted***

Or. en

Amendment 664

Heide Rühle

Proposal for a directive Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. Contracting entities may require that all contractors coordinate under the direction of the economic operator to which a lot involving the coordination of the entire project or its relevant parts has been awarded. ***deleted***

Or. en

Justification

The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.

Amendment 665

Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen

Proposal for a directive

Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. Contracting entities may require that all contractors coordinate under the direction of the economic operator to which a lot involving the coordination of the entire project or its relevant parts has been awarded.

deleted

Or. en

Justification

Simplification of procurement rules.

Amendment 666

Cornelis de Jong

Proposal for a directive

Article 61 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) where the economic operator figures in the register of non-compliance as set up in Article 92 a.

Or. en

Amendment 667

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 64 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Within two months of the award of a contract or the conclusion of a framework agreement, contracting entities shall send a contract award notice on the results of the procurement procedure.

Not later than 14 days after the award of a contract or the conclusion of a framework agreement, contracting entities shall send a contract award notice on the results of the procurement procedure.

Or. en

Justification

TED data is not reliable because Contracting Authorities often forget to send contract award notices. By shortening the deadline, this pillar of data gathering would be made more effective. Furthermore, CANs are often incomplete or incoherent and in practice, the Commission does not get back to the Contracting Authorities for clarification. It would therefore be helpful to introduce a clear obligation of the Commission to check data for completeness and coherence.

Amendment 668

Frank Engel, Andreas Schwab

Proposal for a directive

Article 64 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In the case of public contracts for services listed in Annex XVII B, the contracting authorities shall indicate in the notice whether they agree to its publication. For such services contracts the Commission shall draw up the 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 Article 100.

Or. en

Justification

linked to the reintroduction of the distinction between A and B services

Amendment 669
Andreas Schwab

Proposal for a directive
Article 64 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In case of an incomplete or incoherent contract award notice, the Commission will contact the Contracting Authority with the aim to receive completion or clarification of the contract award notice.

Or. en

Justification

TED data is not reliable because Contracting Authorities often forget to send contract award notices. By shortening the deadline, this pillar of data gathering would be made more effective. Furthermore, CANs are often incomplete or incoherent and in practice, the Commission does not get back to the Contracting Authorities for clarification. It would therefore be helpful to introduce a clear obligation of the Commission to check data for completeness and coherence.

Amendment 670
Lara Comi

Proposal for a directive
Article 65 – paragraph 3

Text proposed by the Commission

Amendment

3. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in ***the other official languages***.

3. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in ***at least one other official language of the European Union, to be chosen by the contracting entity***.

Amendment 671
Raffaele Baldassarre

Proposal for a directive
Article 65 – paragraph 3

Text proposed by the Commission

3. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in *the other official languages*.

Amendment

3. Calls for competition within the meaning of Article 39(2) shall be published in full in an official language of the Union as chosen by the contracting entity. That language version shall constitute the sole authentic text. A summary of the important elements of each notice shall be published in *English*.

Amendment 672
Heide Rühle

Proposal for a directive
Article 66 – paragraph 1

Text proposed by the Commission

1. Notices referred to in Articles 61 to 64 and the information contained therein shall not be published at national level before the publication pursuant to Article 65.

Amendment

deleted

Justification

Bureaucratic and an unnecessary burden and source of mistakes.

Amendment 673
Heide Rühle

Proposal for a directive
Article 67 – paragraph 1

Text proposed by the Commission

1. Contracting entities shall offer **unrestricted and** full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 65 or the date on which the invitation to confirm interest is sent. Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.

Amendment

1. Contracting entities shall offer full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 65 or the date on which the invitation to confirm interest is sent. **Contracting entities may ask under specific circumstances for the name, address or other means to identify the tenderer.** Where the means of calling for competition is a notice on the existence of a qualification system, such access shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent. The text of the notice or of those invitations shall specify the internet address at which this documentation is accessible.

Or. en

Justification

There might be needs to prove for example the tenderers data (name, address etc.)

Amendment 674
Marc Tarabella

Proposal for a directive
Article 68 – paragraph 1 – subparagraph 1

Text proposed by the Commission

In restricted procedures, **innovation partnerships** and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate.

Amendment

In restricted procedures and negotiated procedures with prior call for competition, contracting entities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate.

Amendment 675

Pablo Arias Echeverría

Proposal for a directive

Article 69 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***On request from the party concerned***, contracting entities shall, as soon as possible, and in any case within 15 days from receipt of a written request, inform:

Amendment

2. Contracting entities shall, as soon as possible, ***following the date of the award of the concession, the rejection of the request to participate, the rejection of the tender*** and in any case within 15 days from receipt of a written request, inform:

Or. es

Amendment 676

Lara Comi

Proposal for a directive

Article 69 – paragraph 2 – point d

Text proposed by the Commission

(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

Amendment

deleted

Or. it

Amendment 677

Marc Tarabella

Proposal for a directive

Article 70 – paragraph 3 – introductory part

Text proposed by the Commission

3. When selecting participants for a

Amendment

3. When selecting participants for a

restricted or negotiated procedure **or an innovation partnership**, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

restricted or negotiated procedure, in reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities shall not:

Or. fr

Amendment 678
Heide Rühle

Proposal for a directive
Article 70 – paragraph 5

Text proposed by the Commission

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, **at least in an equivalent manner**, with obligations established by Union legislation in the field of social and labour law or environmental law or **of** the international social and environmental law provisions listed in Annex XIV.

Amendment

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, with obligations established by Union **or national** legislation in the field of social and labour law or environmental law or **collective agreements which apply in the place where the work, service or supply is performed or by the** international social and environmental law provisions listed in Annex XIV **and provided they are linked to the subject matter of the contract.**

Or. en

Amendment 679
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Article 70 – paragraph 5

Text proposed by the Commission

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations

Amendment

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations

established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV.

established by Union legislation in the field of social and labour law, **data protection law** or environmental law or of the international social and environmental law provisions listed in Annex XIV.

Or. en

Amendment 680

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 70 – paragraph 5

Text proposed by the Commission

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where **they have** established that the tender does not comply, **at least in an equivalent manner**, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV.

Amendment

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where **it has been** established that the tender does not comply with obligations established by Union **or national** legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV.

Or. en

Amendment 681

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 70 – paragraph 5

Text proposed by the Commission

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or **of the international social and**

Amendment

5. Contracting entities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or **with the obligations regarding**

environmental law provisions listed in Annex XIV.

working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XIV, whatever the most favourable of workers.

These obligations include:

(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(b) occupational safety and health

(c) working time

(d) wages

(e) social security

Or. en

Amendment 682
Jürgen Creutzmann

Proposal for a directive
Article 70 – paragraph 5

Text proposed by the Commission

5. Contracting *entities may decide* not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV.

Amendment

5. Contracting *authorities shall* not award a contract to the tenderer submitting the best tender where they have established *based on clear and sufficient evidence* that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV.

Or. en

Justification

It should be clear that contracting authorities should not award a contract to a candidate who proves to violate social, labour or environmental law.

Amendment 683
Robert Rochefort

Proposal for a directive
Article 70 – paragraph 6

Text proposed by the Commission

Amendment

6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74. *deleted*

Or. fr

Amendment 684
Marc Tarabella

Proposal for a directive
Article 70 – paragraph 6

Text proposed by the Commission

Amendment

6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria *deleted*

set out by the contracting entity in accordance with Article 72(1) and Article 74.

Or. fr

Amendment 685
Raffaele Baldassarre

Proposal for a directive
Article 70 – paragraph 6

Text proposed by the Commission

Amendment

6. In open procedures, contracting entities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Articles 70 to 79 are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Article 74 or who does not meet the selection criteria set out by the contracting entity in accordance with Article 72(1) and Article 74. **deleted**

Or. it

Amendment 686
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 70 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary due to the conclusion of new international agreements or modification of existing international agreements. **deleted**

Amendment 687
Raffaele Baldassarre

Proposal for a directive
Article 70 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 98 to amend the list in Annex XIV, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

deleted

Or. it

Amendment 688
Heide Rühle

Proposal for a directive
Article 72 – paragraph 2

Text proposed by the Commission

Amendment

2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate. ***The number of candidates selected shall, however, take account of the need to ensure adequate competition.***

2. Where contracting entities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted or negotiated procedures or in innovation partnerships, establish objective rules and criteria that reflect this need and enable the contracting entity to reduce the number of candidates that will be invited to tender or to negotiate.

Or. en

Amendment 689
Raffaele Baldassarre

Proposal for a directive
Article 73 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. ***In the case of economic and financial standing,*** contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.

Amendment

Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator shall prove to the contracting entity that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to that effect. Contracting entities may require that the economic operator and those entities are jointly liable for the execution of the contract.

Or. it

Amendment 690
Heide Rühle

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules

Amendment

The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules

and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.

and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein, ***including Article 55(4) and (5) on self-cleaning measures.***

Or. en

Amendment 691
Marc Tarabella

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures ***or in innovation partnerships*** may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.

Amendment

The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures may include the exclusion grounds listed in Article 55 of Directive 2004/18 on the terms and conditions set out therein.

Or. fr

Amendment 692
Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a

Amendment

The objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a

qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships **may** include the exclusion grounds listed in Article 55 of Directive **2004/18** on the terms and conditions set out therein.

qualification system and the objective rules and criteria for the exclusion and selection of candidates and tenderers in open, restricted or negotiated procedures or in innovation partnerships **shall** include the exclusion grounds listed in Article 55 of Directive [.../.../EU][**replacing Directive 2004/18/EC on public procurement**] on the terms and conditions set out therein.

Or. en

Amendment 693

Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where the contracting entity is a contracting authority, those criteria and rules shall include the exclusion grounds listed in Article 55(1) and (2) of Directive 2004/18 on the terms and conditions set out in that Article.

Amendment

deleted

Or. en

Amendment 694

Heide Rühle

Proposal for a directive

Article 74 – paragraph 2

Text proposed by the Commission

2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, as provided for under the second subparagraph of paragraph 3 of that

Amendment

2. The criteria and rules referred to in paragraph 1 may include the selection criteria set out in Article 56 of Directive 2004/18/EC on the terms and conditions set out therein, notably as regards the limits to requirements concerning yearly turnovers, ***the acceptance of self-declarations as well as the European***

Article.

Procurement Passport, as provided for under the second subparagraph of paragraph 3 of that Article.

Or. en

Amendment 695

Heide Rühle

Proposal for a directive

Article 74 – paragraph 3

Text proposed by the Commission

3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 57 to 60 of Directive 2004/18/EC shall apply.

Amendment

3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 55 to 60 of Directive 2004/18/EC shall apply.

Or. en

Amendment 696

Heide Rühle

Proposal for a directive

Article 75 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where they request the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by bodies ***conforming to the European standards series concerning certification.***

Amendment

Where they request the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting entities shall refer to quality assurance systems based on the relevant European standards series certified by ***specific conformity assessment*** bodies.

Or. en

Amendment 697

Heide Rühle

Proposal for a directive

Article 75 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Amendment

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits, ***provided that the lack of access is not attributable to the economic operator concerned. However in order not to discriminate those tenderers who invest time and money for certificates, the burden for providing equivalence with a specific label should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 698

Heide Rühle

Proposal for a directive

Article 75 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Amendment

Contracting entities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits, ***provided that the lack of access is not attributable to the economic operator concerned. However in order not to discriminate those tenderers***

who invest time and money for certificates, the burden for providing equivalence with a specific label should be placed on the tenderer claiming equivalence.

Or. en

Amendment 699
Heide Rühle

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which contracting entities shall base the award of contracts shall be ***one of the following***:

Amendment

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which contracting entities shall base the award of contracts shall be:

Or. en

Amendment 700
Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the ***criteria*** on which ***contracting entities*** shall base the award of contracts shall be ***one of the following***:

Amendment

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the ***criterion*** on which ***contracting authorities*** shall base the award of ***public*** contracts shall be ***the most economically advantageous tender***.

Or. fr

Amendment 701
Robert Rochefort

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the **criteria** on which contracting entities shall base the award of contracts shall be **one of the following**:

Amendment

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the **critierion** on which contracting entities shall base the award of contracts shall be **the most economically advantageous tender. Where the public contract concerns the supply of goods, particularly standardised goods, contracting authorities may base the award of the contract on the lowest cost criterion.**

Or. fr

Amendment 702
Marc Tarabella

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, **the criteria on which** contracting entities shall base the award of contracts **shall be one of the following**:

Amendment

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, contracting entities shall base the award of contracts **on multiple criteria used to determine the most economically advantageous tender.**

Or. fr

Amendment 703
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the **criteria** on which contracting **entities** shall base the award of contracts shall be **one of the following**:

Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the **criterion** on which contracting **authorities** shall base the award of contracts shall be **the most economically advantageous and sustainable tender**.

Or. de

Amendment 704
Barbara Weiler

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the **criteria** on which contracting entities shall base the award of contracts shall be **one of the following**:

Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the **criterion** on which contracting entities shall base the award of contracts shall be **the most economically advantageous tender**.

Or. de

Amendment 705
Robert Rochefort

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the most economically advantageous tender;

deleted

Or. fr

Amendment 706
Barbara Weiler

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the most economically advantageous tender; *deleted*

Or. de

Amendment 707
Marc Tarabella

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the most economically advantageous tender; *deleted*

Or. fr

Amendment 708
Heide Rühle

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost. *deleted*

Or. en

Amendment 709
Marc Tarabella

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. fr

Amendment 710
Robert Rochefort

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. fr

Amendment 711
Evelyne Gebhardt

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. de

Amendment 712
Barbara Weiler

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. de

Amendment 713

Lara Comi

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest *cost*.

(b) the lowest *price*.

Or. it

Amendment 714

Jürgen Creutzmann

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest *cost*.

(b) the lowest *price only where no other award criteria are available from an objective point of view, in particular for standardised products as defined in point 22a (new) of Article 2.*

Or. en

Justification

While the economically most advantageous tender should be the decisive award criterion in most cases, the lowest price criterion should be maintained for standardised products. Standardised products are defined as products that do not differ significantly in their composition or characteristics.

Amendment 715

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Costs may be assessed, at the choice of the contracting entity, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77.

deleted

Or. fr

Amendment 716
Jürgen Creutzmann

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Costs may be assessed, at the choice of the contracting entity, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77.

deleted

Or. en

Amendment 717
Heide Rühle

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Costs may be assessed, at the choice of the contracting entity, ***on the basis of the price only or*** using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77.

Costs may be assessed, at the choice of the contracting entity, using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77.

Or. en

Amendment 718

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Costs *may* be assessed, **at the choice of the contracting entity, on the basis of the price only or** using a cost-effectiveness approach, such as a life-cycle costing approach, **under** the conditions set out in Article 77.

Amendment

Costs **shall** be assessed using a cost-effectiveness approach, such as a life-cycle costing approach, **in accordance with** the conditions set out in Article 77.

Or. de

Amendment 719

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The most economically advantageous tender referred to in **point (a) of** paragraph 1) from the point of view of the contracting entity shall be identified on the basis of criteria linked to the subject-matter of the contract in question.

Amendment

The most economically advantageous tender referred to in paragraph 1 from the point of view of the contracting entity shall be identified on the basis of criteria linked to the subject-matter of the contract in question. **Those criteria may include, in addition to the price or costs, other criteria linked to the subject-matter of the contract in question.**

Costs shall be assessed using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77.

Price shall be the decisive award criterion in the case of highly standardised products and services.

Other criteria may include:

Or. fr

Amendment 720

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The most economically advantageous tender referred to in point (a) of paragraph 1) from the point of view of the contracting entity shall be identified on the basis of criteria linked to the subject-matter of the contract in question.

Amendment

The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting entity shall be identified on the basis of criteria linked to the subject-matter of the **public** contract in question **and, wherever possible, on the basis of the monetisation of the life cycle as defined in Article 2, point 22.**

Or. en

Amendment 721

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The most economically advantageous tender referred to in **point (a) of** paragraph 1) from the point of view of the **contracting entity** shall be identified on the basis of criteria linked to the subject-matter of the contract in question.

Amendment

The most economically advantageous tender referred to in paragraph 1 from the point of view of the **contracting authority** shall be identified on the basis of criteria linked to the subject-matter of the **public** contract in question. **Those criteria shall include, in addition to the price or costs, other criteria linked to the subject-matter of the public contract in question.**

Or. fr

Amendment 722

Evelyne Gebhardt

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The most economically advantageous tender referred to in point (a) of paragraph 1) from the point of view of the contracting entity shall be identified on the basis of criteria linked to the subject-matter of the contract in question.

Amendment

The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting **authority** shall be identified on the basis of criteria linked to the subject-matter of the **public** contract in question.

Or. de

Amendment 723
Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Those criteria shall include in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the contract in question, such as:

Amendment

deleted

Or. fr

Amendment 724
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Those criteria **shall** include in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the contract in question, such as:

Amendment

Those criteria **may** include in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the contract in question, such as:

Or. en

Amendment 725

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Those criteria shall include in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the contract in question, such as:

Amendment

Costs shall be assessed using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 77. Price shall be the decisive award criterion in the case of highly standardised products and services. Other criteria may include:

Or. fr

Amendment 726

Evelyne Gebhardt

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Those criteria shall include *in addition to the price or costs referred to in point (b) of paragraph 1*, other criteria linked to the subject-matter of the contract in question, such as:

Amendment

Those criteria shall include other criteria linked to the subject-matter of the *public* contract in question, such as:

Or. de

Amendment 727

Jürgen Creutzmann

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Those criteria shall include in addition to

Amendment

Those criteria shall include, in addition to

the price *or costs referred to in point (b) of paragraph 1*, other criteria linked to the subject-matter of the contract in question, such as:

the price, other criteria linked to the subject-matter of the **public** contract in question, such as:

Or. en

Amendment 728
Heide Rühle

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental *characteristics* and innovative *character*;

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental, *social* and innovative *characteristics*;

Or. en

Amendment 729
Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative *character*;

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative *aspects, after-sales service and technical assistance, delivery conditions (delivery date, delivery process and delivery period or period of completion)*;

Or. en

Justification

The list of criteria – other than price or costs – which may be taken into account is not exhaustive but open and it should be clear from the wording of the Article.

Amendment 730

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental, **social** characteristics and innovative character;

Or. en

Amendment 731

Jürgen Creutzmann

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) costs over the life cycle in accordance with Article 67

Or. en

Justification

Life-cycle costing should be one of the options in order to determine the economically most advantageous tender rather than an alternative to it.

Amendment 732

Sergio Gaetano Cofferati

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) decent working conditions, health and safety in the workplace and respect for collective bargaining;

(This amendment should be placed before letter (a) of this paragraph).

Or. it

Amendment 733

Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting entity which must verify that replacements ensure equivalent organisation and quality; **deleted**

Or. de

Justification

The rule stipulating that, following the award of the contract, staff working for the contractor may be replaced only with the consent of the contracting authority and that the latter must verify that the replacements ensure equivalent organisation and quality would generate an excessive administrative workload and might give rise to employment law-related problems, for SMUs in particular. What is more, this rule would run counter to the principle of the separation of eligibility and award criteria.

Amendment 734
Heide Rühle

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting entity which must verify that replacements ensure equivalent organisation and quality;

Amendment

(b) for service contracts and contracts involving **works and especially** the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting entity which must verify that replacements ensure equivalent organisation and quality;

Or. en

Justification

This should be up to the contracting authority for restoration of old buildings for example those criterias are as important as in the case of the design of works.

Amendment 735

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

(b) for **service contracts and contracts involving** the **design** of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting **entity which must verify that replacements ensure equivalent**

Amendment

(b) **wherever the quality of the staff is of crucial importance** for the **performance** of the **contract**, organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that , following the award of the contract, such staff may only be replaced with the consent of the contracting **entity**;

organisation and quality;

Or. en

Justification

Qualification and experience of the staff criterion should be taken into consideration only in regard to services of for instance intellectual nature, where qualification and experience of particular person are of a crucial importance for achieving a high quality of service. However, if it is envisaged for all types of services it should at least clarify that the criterion may be applied if qualification and experience of the staff are of a crucial importance for achieving a high quality of particular service.

Amendment 736
Jürgen Creutzmann

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) for service contracts and contracts involving the design of works, the **organisation**, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting **entity** which must verify that replacements ensure equivalent **organisation** and **quality**;

(b) for service contracts and contracts involving the design of works, the qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting **authority**, which must verify that replacements ensure equivalent **qualification** and **experience**;

Or. en

Amendment 737
Andreas Schwab

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) the specific process of production or

deleted

provision of the requested works, supplies or services or of any other stage of its life cycle, as referred to in point 22 of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in those processes and characterise the specific process of production or provision of the requested works, supplies or services.

Or. de

Justification

In the context of contract award procedures, non-procurement-related criteria should be used only if they are closely linked to the subject-matter of the contract. The requirement to take account of production processes when determining the economically most advantageous tender is at odds with that principle.

Amendment 738

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle, as referred to in point 22 of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in those processes and characterise the specific process of production or provision of the requested works, supplies or services.

deleted

Or. en

Amendment 739

Jürgen Creutzmann

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle, as referred to in point 22 of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in those processes and characterise the specific process of production or provision of the requested works, supplies or services.

deleted

Or. en

Amendment 740
Heide Rühle

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle, as referred to in point 22 of Article 2, *to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in those processes and characterise the specific process of production or provision of the requested works, supplies or services.*

(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle, as referred to in point 22 of Article 2, specified in accordance with paragraph 4.

Or. en

Justification

Extremely complex wording - redundant

Amendment 741

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) social criteria, such as respect for the right to decent working conditions, compliance with health and safety rules, collective bargaining, gender equality (e.g. equal pay, work-life balance), social integration, including employment opportunities for disabled, disadvantaged or vulnerable workers (such as long-term unemployed persons, Roma, migrants or younger and older workers), access to on-site vocational training, user involvement and consultation, affordability, human rights and ethical trade;

Or. de

Amendment 742

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) characteristics relating to working conditions that aim to protect the health of the workers or favour the social integration of disadvantaged or disabled persons amongst the persons assigned to performing the contract.

Or. es

Amendment 743

Sergio Gaetano Coffferati

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) social criteria such as gender balance, social inclusion, including employment opportunities for disabled, disadvantaged or vulnerable workers, access to vocational training in the workplace, consultation and participation of users, economic accessibility;

Or. it

Amendment 744

Evelyne Gebhardt

Proposal for a directive

Article 76 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2.

deleted

Or. de

Amendment 745

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2.

deleted

Amendment 746
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 76 – paragraph 4

Text proposed by the Commission

4. Award criteria shall ***not confer an unrestricted freedom of choice on the contracting entity***. They shall ensure the possibility of effective competition and shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. Contracting ***entities*** shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

Amendment

4. Award criteria shall ***be linked to the subject-matter of the contract (this shall not exclude invisible product or service characteristics, such as life-cycle characteristics)***; they shall ensure the possibility of effective ***and fair*** competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting ***authorities*** shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

Or. de

Amendment 747
Heide Rühle

Proposal for a directive
Article 76 – paragraph 4

Text proposed by the Commission

4. Award criteria shall ***not confer an unrestricted freedom of choice on the contracting entity. They shall ensure the possibility of effective competition and shall*** be accompanied by requirements which allow the information provided by the tenderers to be effectively verified. ***Contracting entities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award***

Amendment

4. Award criteria shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified.

criteria.

Or. en

Justification

redundant

Amendment 748
Jürgen Creutzmann

Proposal for a directive
Article 77 – paragraph 1 – introductory part

Text proposed by the Commission

1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point 22 of Article 2:

Amendment

1. Life-cycle costing shall to the extent relevant cover **parts or all of** the following costs **borne by the contracting authority or other users** over the life cycle of a product, service or works as defined in point (22) of Article 2:

Or. en

Justification

Life-cycle costing should start at the point of purchase and be limited to internal costs. External costs are difficult to quantify and at the same time life-cycling costing should not lead to new barriers for the free movement of goods and services in the single market. External costs should therefore not be included in the life-cycle costing.

Amendment 749
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 77 – paragraph 1 – point a

Text proposed by the Commission

(a) internal costs, **including costs** relating to **acquisition**, such as **production** costs, **use, such as** energy **consumption**, **maintenance** costs and **end of life**, such as

Amendment

(a) internal costs relating to **use**, such as **maintenance and resource efficiency** costs (**including** energy **efficiency**), **end-of-life recycling and collection** costs, and **social**

collection and recycling costs and

impact costs where these relate to performance of the contract. Internal costs also include considerations of efficient design, planning and process costs such as the use of electronic means.

Or. en