



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0439(COD)

17.7.2012

AMENDMENTS 425 - 723

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))

AM_Com_LegReport

Amendment 425
Marc Tarabella

Proposal for a directive
Article 29 – paragraph 2

Text proposed by the Commission

Un marché ne peut être conçu avec l'objectif de le faire sortir du champ d'application de la présente directive ou de limiter artificiellement la concurrence.

Amendment

supprimé

Or. fr

Amendment 426
Pablo Arias Echeverría

Proposal for a directive
Article 29 – paragraph 2

Text proposed by the Commission

La contratación no será concebida con el objetivo de excluirla del ámbito de aplicación de la presente Directiva ni de restringir artificialmente la competencia.

Amendment

La contratación no será concebida con el objetivo de excluirla del ámbito de aplicación de la presente Directiva ni de restringir artificialmente la competencia.
Los procedimientos deberán estar siempre acompañado de salvaguardias adecuadas que garanticen la observancia de los principios de igualdad de trato y transparencia, libre competencia, publicidad y gestión eficiente de los recursos públicos.

Or. es

Amendment 427
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 428
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 429
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 430
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 431
Heide Rühle

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

Text proposed by the Commission

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.

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 relevant professional ***qualification levels*** of the staff responsible for the performance of the contract in question.

Or. en

Amendment 432
Pablo Arias Echeverría

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

Text proposed by the Commission

No obstante, en el caso de los contratos de servicios y de obras, así como de los

Amendment

No obstante, en el caso de los contratos de servicios y de obras, así como de los

contratos de suministro que tengan por objeto además servicios u operaciones de colocación e instalación, también podrá exigirse a las personas jurídicas que indiquen, en la oferta o en la solicitud de participación, **los nombres y** la cualificación profesional pertinente del personal responsable de ejecutar el contrato en cuestión.

contratos de suministro que tengan por objeto además servicios u operaciones de colocación e instalación, también podrá exigirse a las personas jurídicas que indiquen, en la oferta o en la solicitud de participación, la cualificación profesional pertinente del personal responsable de ejecutar el contrato en cuestión.

Or. es

Amendment 433

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 434
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 31 – paragraph 1

Text proposed by the Commission

Los Estados miembros podrán reservar el derecho a participar en **los** procedimientos de contratación a talleres protegidos y **operadores económicos cuyo objetivo principal sea la integración social y profesional de trabajadores discapacitados y desfavorecidos** o prever la ejecución de los contratos en el contexto de programas de empleo protegido, a condición de que más del 30 % de los empleados de los **talleres, los** operadores económicos o **los** programas sean trabajadores **discapacitados o** desfavorecidos.

Amendment

Los Estados miembros podrán reservar el derecho a participar en procedimientos de contratación a:

*a) talleres protegidos **promovidos y participados mayoritariamente por entidades sin ánimo de lucro**, o prever la ejecución de los contratos en el contexto de programas de empleo protegido, a condición de que **la mayoría de los trabajadores afectados sean personas con discapacidad que, por razón de la naturaleza o la gravedad de sus deficiencias, no pueden ejercer una actividad profesional en condiciones normales o no encuentren fácilmente trabajo en el mercado ordinario;***

*b) **empresas sociales o programas cuyo principal objetivo sea la integración social y profesional de trabajadores desfavorecidos, a condición de que** más del 30% de los empleados de los operadores económicos o programas, sean trabajadores desfavorecidos.*

La convocatoria de licitación deberá hacer referencia a la presente disposición.

En los Estados miembros en que las

circunstancias lo justifiquen por existir un número importante de personas con discapacidad que pueden trabajar pero que siguen inactivas, la reserva de contratos reseñada en el apartado a) anterior deberá ser obligatoria al menos en el número o porcentaje determinado de contratos que se indiquen por los órganos de contratación u otros órganos competentes.

Or. es

Amendment 435
Frank Engel

Proposal for a directive
Article 32 – paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Tout manquement à cette obligation est de nature à engager la responsabilité de l'entité adjudicatrice.

Or. fr

Amendment 436
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

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

operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

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 437

Frank Engel

Proposal for a directive

Article 32 – paragraph 2

Text proposed by the Commission

2. Sauf disposition contraire de la présente directive ou des règles de droit national régissant l'accès à l'information, et sans préjudice des obligations en matière de publicité sur les marchés attribués et d'information des candidats et des soumissionnaires qui figurent aux articles 64 et 69 de la présente directive, l'entité adjudicatrice ne divulgue pas les renseignements que les opérateurs économiques lui ont communiqués *à titre confidentiel, y compris, entre autres, les secrets techniques ou commerciaux et les aspects confidentiels des offres.*

Amendment

2. Sauf disposition contraire de la présente directive ou des règles de droit national régissant l'accès à l'information, et sans préjudice des obligations en matière de publicité sur les marchés attribués et d'information des candidats et des soumissionnaires qui figurent aux articles 64 et 69 de la présente directive, l'entité adjudicatrice ne divulgue pas les renseignements *et éléments constitutifs des offres* que les opérateurs économiques lui ont communiqués.

Or. fr

Amendment 438

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 439

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 440

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 441

Frank Engel

Proposal for a directive

Article 33 – paragraph 3 – subparagraph 3

Text proposed by the Commission

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.

Amendment

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 442

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 443
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 444
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 445

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 446

Robert Rochefort

Proposal for a directive

Article 34 – paragraph 1

Text proposed by the Commission

Les États membres veillent à ce que, *deux* ans au plus tard après la date prévue à l'article 101, paragraphe 1, toutes les procédures de passation de marché relevant de la présente directive soient effectuées par des moyens de communication électroniques, et notamment par soumission électronique, conformément aux exigences du présent article.

Amendment

Les États membres veillent à ce que, *trois* ans au plus tard après la date prévue à l'article 101, paragraphe 1, toutes les procédures de passation de marché relevant de la présente directive soient effectuées par des moyens de communication électroniques, et notamment par soumission électronique, conformément aux exigences du présent article.

Or. fr

Amendment 447

Lara Comi

Proposal for a directive

Article 36 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Gli Stati membri, ***per quanto riguarda le autorità aggiudicatrici di cui all'articolo 2, punto 1***, prevedono regole atte a prevenire efficacemente, individuare e porre immediatamente rimedio a conflitti di interessi che si verifichino nello svolgimento delle procedure di aggiudicazione degli appalti soggette alla presente direttiva, comprese la concezione e la preparazione della procedura, la redazione dei documenti di gara, la selezione dei candidati e degli offerenti e l'aggiudicazione dell'appalto, in modo da evitare qualsiasi distorsione della concorrenza e garantire la parità di trattamento di tutti gli offerenti.

Amendment

Gli Stati membri prevedono regole atte a prevenire efficacemente, individuare e porre immediatamente rimedio a conflitti di interessi che si verifichino nello svolgimento delle procedure di aggiudicazione degli appalti soggette alla presente direttiva, comprese la concezione e la preparazione della procedura, la redazione dei documenti di gara, la selezione dei candidati e degli offerenti e l'aggiudicazione dell'appalto, in modo da evitare qualsiasi distorsione della concorrenza e garantire la parità di trattamento di tutti gli offerenti.

Or. it

Amendment 448

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 449
Marc Tarabella

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

Text proposed by the Commission

La notion de conflit d'intérêts ***couvre au moins toutes*** les situations où les catégories de personnes visées au paragraphe 2 ont un intérêt privé direct ou indirect dans le résultat de la procédure de passation de marché qui peut être perçu comme portant atteinte à l'exercice impartial et objectif de leurs fonctions.

Amendment

La notion de conflit d'intérêts ***visé*** les situations où les catégories de personnes visées au paragraphe 2 ont un intérêt privé direct ou indirect dans le résultat de la procédure de passation de marché qui peut être perçu comme portant atteinte à l'exercice impartial et objectif de leurs fonctions.

Or. fr

Amendment 450
Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

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. en

Amendment 451
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 452

Marc Tarabella

Proposal for a directive

Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Aux fins du présent article, on entend par «intérêt privé» **tout** intérêt **familial, sentimental, économique, politique** ou **autre** partagé avec les candidats ou soumissionnaires, **y compris** les **intérêts professionnels conflictuels**.

Amendment

L'intérêt privé est entendu au sens d'intérêt patrimonial ou financier partagé avec les candidats ou soumissionnaires **ainsi que aux avantages découlant des paiements financiers directs, au moyen d'emploi, de contrat de travail, d'investissements ainsi que à la participation dans les activités soutenues par les contrats**.

Or. fr

Amendment 453

Lara Comi

Proposal for a directive

Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Ai fini del presente articolo per «interessi privati» si intendono quelli familiari, **affettivi**, economici o politici, **oppure altri interessi** comuni con i candidati o gli offerenti, compresi gli interessi

Amendment

Ai fini del presente articolo per «interessi privati» si intendono quelli familiari, economici o politici comuni con i candidati o gli offerenti, compresi gli interessi professionali confliggenti.

professionali confliggenti.

Or. it

Amendment 454

Marc Tarabella

Proposal for a directive

Article 36 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) le directeur du pouvoir adjudicateur et les membres des organes décisionnels du pouvoir adjudicateur qui, sans nécessairement participer à la conduite de la procédure de passation de marché, peuvent néanmoins influencer sur son résultat.

supprimé

Or. fr

Amendment 455

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 456

Heide Rühle

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, *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 457

Lara Comi

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) che i candidati e gli offerenti siano tenuti a presentare, all'inizio della procedura, una dichiarazione sull'esistenza di legami privilegiati con le persone di cui al paragrafo 2, lettera b), che rischiano di mettere tali persone in una situazione di conflitto di interessi. L'*amministrazione aggiudicatrice* indica nella relazione unica di cui all'articolo 94 se un candidato o un

Amendment

(b) che i candidati e gli offerenti siano tenuti a presentare, *anche ai sensi del codice etico predisposto dall'ente aggiudicatore* all'inizio della procedura, una dichiarazione sull'esistenza di legami privilegiati con le persone di cui al paragrafo 2, lettera b), che rischiano di mettere tali persone in una situazione di conflitto di interessi. L'*ente aggiudicatore*

offerente hanno presentato una dichiarazione.

indica nella relazione unica di cui all'articolo 94 se un candidato o un offerente hanno presentato una dichiarazione.

Or. it

Amendment 458
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 459
Lara Comi

Proposal for a directive
Article 36 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In caso di conflitto d'interessi, ***l'amministrazione aggiudicatrice*** adotta misure adeguate. Tra tali misure può figurare l'esclusione del membro del personale in questione dalla partecipazione alla procedura di gara in oggetto o la sua riassegnazione ad altri obblighi e responsabilità. Qualora i conflitti di

Amendment

In caso di conflitto d'interessi, ***l'ente aggiudicatore*** adotta misure adeguate. Tra tali misure può figurare l'esclusione del membro del personale in questione dalla partecipazione alla procedura di gara in oggetto o la sua riassegnazione ad altri obblighi e responsabilità. Qualora i conflitti di interesse non possano essere

interesse non possano essere risolti efficacemente con altri mezzi, il candidato o l'offerente interessato sono esclusi dalla procedura.

risolti efficacemente con altri mezzi, il candidato o l'offerente interessato sono esclusi dalla procedura.

Or. it

Amendment 460

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

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 461

Heide Rühle

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

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

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.

tenderers. *If the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.*

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 462

Lara Comi

Proposal for a directive

Article 36 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Qualora si individui la presenza di legami privilegiati, l'*amministrazione aggiudicatrice* informa immediatamente l'organo di vigilanza designato a norma dell'articolo 93 e adotta misure adeguate per evitare qualsiasi influenza indebita sul processo di aggiudicazione e assicurare parità di trattamento dei candidati e degli offerenti. Se il conflitto di interessi non può essere risolto efficacemente con altri mezzi, il candidato o l'offerente interessato sono esclusi dalla procedura.

Amendment

Qualora si individui la presenza di legami privilegiati, l'*ente aggiudicatore* informa immediatamente l'organo di vigilanza designato a norma dell'articolo 93 e adotta misure adeguate per evitare qualsiasi influenza indebita sul processo di aggiudicazione e assicurare parità di trattamento dei candidati e degli offerenti. Se il conflitto di interessi non può essere risolto efficacemente con altri mezzi, il candidato o l'offerente interessato sono esclusi dalla procedura.

Or. it

Amendment 463

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 464
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.

Or. en

Justification

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

Amendment 465
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 466
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 467
Marc Tarabella

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

Text proposed by the Commission

Amendment

Chapitre IV bis

Règles de réciprocité

Article 37bis

Exclusion d'offres comprenant, par les pouvoirs adjudicateurs et entités adjudicatrices, des produits et services non couverts

1. Les entités adjudicatrices évaluent s'il y a lieu d'exclure des procédures d'attribution de marchés publics des offres contenant des travaux, fournitures ou services provenant de pays tiers n'étant pas liés par un accord international, si la valeur des travaux, fournitures ou services non couverts représente plus de 50 % de la valeur totale des travaux, fournitures ou services constituant l'offre, dans le respect des dispositions suivantes. Une offre, provenant de pays tiers n'étant pas liés par un accord international, est automatiquement rejetée si le prix est inférieur à 30 % du prix ou du coût moyen des autres offres.

2. Les entités adjudicatrices peuvent exiger des soumissionnaires qu'ils fournissent des informations sur l'origine des travaux, fournitures ou services contenus dans l'offre ainsi que sur leur valeur. Elles acceptent les déclarations sur l'honneur en tant que moyen provisoire empêchant l'exclusion d'une offre en vertu du paragraphe 1. Un pouvoir adjudicateur peut demander à un soumissionnaire, à tout moment de la procédure, de fournir tout ou partie des documents requis, si cela apparaît nécessaire pour assurer le bon déroulement de la procédure. Lorsque les entités adjudicatrices reçoivent des offres répondant aux conditions du paragraphe 1 pour lesquelles ils excluent pour cette raison, elles le notifient à la Commission. Elles peuvent poursuivre leur analyse des offres pendant la procédure de notification. La notification est transmise par voie électronique au moyen d'un formulaire standard. La Commission peut adopter des actes d'exécution établissant les formulaires standard pour les déclarations relatives à l'origine des travaux, fournitures ou services. Ces actes d'exécution sont adoptés en conformité avec la procédure consultative visée à l'article 100, paragraphe 2. Le formulaire standard contient les informations

suivantes:

(a) le nom et les coordonnées de l'entité adjudicatrice;

(b) une description de l'objet du marché;

(c) le nom et les coordonnées de l'opérateur économique dont l'offre doit être exclue;

(d) des informations sur l'origine de l'opérateur économique, sur les travaux, fournitures ou services et sur leur valeur.

3. Lorsque la Commission n'approuve pas la décision de l'entité adjudicatrice d'exclure une offre en vertu du paragraphe 1, la Commission doit notifier sa désapprobation motivée dans un délai des 15 jours à partir du premier jour ouvrable après la date à laquelle la Commission reçoit la notification. Ce délai peut être prolongé une fois pour un maximum de 15 jours, dans des cas dûment justifiés, notamment lorsque les informations figurant dans la notification ou dans les documents annexes sont incomplètes ou inexacts ou lorsque les faits rapportés subissent des modifications substantielles. Si, à la fin de cette période de 30 jours la Commission n'a pas adopté de décision approuvant ou rejetant l'exclusion, celle-ci est réputée acceptée par la Commission.

4. Les entités adjudicatrices exigent des soumissionnaires qu'ils fournissent des informations sur l'origine des produits et des services contenus dans l'offre ainsi que sur leur valeur. Elles acceptent les déclarations sur l'honneur en tant que moyen provisoire empêchant l'exclusion d'une offre en vertu du paragraphe 1. Une entité adjudicatrice peut demander à un soumissionnaire, à tout moment de la procédure, de fournir tout ou partie des documents requis, si cela apparaît nécessaire pour assurer le bon déroulement de la procédure.

5. L'exclusion des procédures d'attribution de marchés des offres

contenant des travaux, fournitures ou services doivent remplir les conditions suivantes:

(a) si l'accord international concernant l'accès au marché dans le domaine des marchés publics conclu entre l'Union et le pays d'origine des produits ou services comporte, pour les produits ou services dont l'exclusion est proposée, des réserves explicites concernant l'accès au marché formulées par l'Union;

(b) lorsque l'accord visé au point a) n'existe pas et que le pays tiers applique des mesures restrictives en matière de passation de marchés, qui entraînent un manque de réciprocité substantielle en termes d'ouverture du marché entre l'Union et le pays tiers concerné.

Aux fins du point b), l'absence de réciprocité substantielle est présumée lorsque les mesures restrictives en matière de passation de marchés se traduisent par des discriminations graves et persistantes à l'égard des opérateurs économiques, des travaux, fournitures et services de l'Union.

6. La Commission entend les entités adjudicatrices concernées avant de prendre une décision en vertu du paragraphe 3.

Article 38 ter

Mise en œuvre des conditions de réciprocité

Les marchés conclus avec un opérateur économique en violation de l'intention de la Commission d'exclure une offre, conformément à l'article 38 bis, suite à la notification de l'approbation d'exclusion par les entités adjudicatrices, sont déclarés dépourvus d'effets au sens de la directive 2007/66/CE.

Or. fr

Amendment 468
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 469
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 470
Evelyne Gebhardt

Proposal for a directive
Article 39 – paragraph 86 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Die Mitgliedstaaten schreiben vor, dass die öffentlichen Auftraggeber das Verhandlungsverfahren oder den wettbewerblichen Dialog anwenden, wenn der öffentliche Auftrag zu einem Unternehmensübergang führen könnte.

Or. de

Amendment 471

Marc Tarabella

Proposal for a directive

Article 39 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) un avis sur l'existence d'un système de qualification, conformément à l'article 62, lorsque le marché est passé par une procédure restreinte ou négociée ***ou par un partenariat d'innovation;***

Amendment

(b) un avis sur l'existence d'un système de qualification, conformément à l'article 62, lorsque le marché est passé par une procédure restreinte ou négociée.

Or. fr

Amendment 472

Marc Tarabella

Proposal for a directive

Article 39 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) un avis sur l'existence d'un système de qualification, conformément à l'article 62, lorsque le marché est passé par une procédure restreinte ou négociée ***ou par un partenariat d'innovation;***

Amendment

(b) un avis sur l'existence d'un système de qualification, conformément à l'article 62, lorsque le marché est passé par une procédure restreinte ou négociée.

Or. fr

Amendment 473

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

Amendment

3. Member States ***shall*** 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.

competition *as* referred to expressly in Article 42.

Or. en

Amendment 474
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.

Or. en

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 475
Cornelis de Jong

Proposal for a directive
Article 40 – paragraph 4

Text proposed by the Commission

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).

Amendment

deleted

Or. en

Amendment 476
Jürgen Creutzmann

Proposal for a directive
Article 41 – 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 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 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 477
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 478
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 479
Marc Tarabella

Proposal for a directive
Article 42 – paragraph 2 – subparagraph 3 – point 1 (new)

Text proposed by the Commission

Amendment

(1) Il est interdit aux pouvoirs adjudicateurs de négociier exclusivement le prix des offres.

Or. fr

Amendment 480
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 481
Marc Tarabella

Proposal for a directive
Article 43

Article 43

supprimé

Partenariat d'innovation

1. Les États membres peuvent prévoir la possibilité, pour les entités adjudicatrices, de mettre en œuvre des partenariats d'innovation tels que régis par la présente directive. Les États membres peuvent décider de ne pas transposer les partenariats d'innovation dans leur droit interne ou d'en limiter l'utilisation à certains types de marchés.

Dans un partenariat d'innovation, tout opérateur économique peut soumettre une demande de participation en réponse à une mise en concurrence conformément à l'article 39, paragraphe 2, points b) et c), en vue d'établir un partenariat structuré pour le développement d'un produit, de services ou de travaux innovants et d'acquérir ensuite les fournitures, services ou travaux résultants, à condition qu'ils correspondent aux niveaux de performance et aux coûts convenus.

2. Le partenariat est structuré en phases successives qui suivent les étapes du processus de recherche et d'innovation, qui peuvent aller jusqu'au stade de la fabrication du bien ou de la prestation des services. Il prévoit des objectifs intermédiaires que le partenaire doit atteindre, ainsi qu'un paiement selon des tranches appropriées. Sur la base de ces objectifs, l'entité adjudicatrice peut décider, après chaque phase, de mettre un terme au partenariat et de lancer une nouvelle procédure de passation de marché pour les phases restantes, à condition qu'elle ait acquis les droits de propriété intellectuelle correspondants.

3. Le marché est attribué conformément aux règles applicables à la procédure négociée avec mise en concurrence

préalable décrite à l'article 42.

Lors de la sélection des candidats, les entités adjudicatrices portent une attention particulière aux critères relatifs aux capacités et à l'expérience des soumissionnaires dans le domaine de la recherche et du développement ou de l'élaboration de solutions innovantes. Elles peuvent limiter le nombre de candidats appropriés invités à participer à la procédure, conformément à l'article 72, paragraphe 2.

Seuls les opérateurs économiques faisant l'objet d'une invitation de l'entité adjudicatrice suite à l'évaluation des informations requises peuvent soumettre des projets de recherche et d'innovation qui visent à répondre aux besoins constatés par l'entité adjudicatrice et que les solutions existantes ne permettent pas de couvrir. Le marché est attribué sur la seule base du critère d'attribution à l'offre économiquement la plus avantageuse, conformément à l'article 76, paragraphe 1, point a).

4. La structure du partenariat, et notamment la durée et la valeur de ses différentes phases, tiennent compte du degré d'innovation de la solution proposée et de la séquence des activités de recherche et d'innovation requises pour le développement d'une solution innovante non encore disponible sur le marché. La valeur et la durée d'un marché pour l'achat des fournitures, des services ou des travaux résultants respectent des limites appropriées, compte tenu de la nécessité de recouvrer les coûts, y compris ceux encourus lors du développement d'une solution innovante, et de réaliser des bénéfices adéquats.

Les entités adjudicatrices ne peuvent recourir aux partenariats d'innovation de manière à empêcher, à restreindre ou à fausser la concurrence.

Amendment 482

Frank Engel, Andreas Schwab

Proposal for a directive

Article 43 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Les États membres ***peuvent prévoir*** la possibilité, pour les entités adjudicatrices, de mettre en œuvre des partenariats d'innovation tels que régis par la présente directive. ***Les États membres peuvent décider de ne pas transposer les partenariats d'innovation dans leur droit interne ou d'en limiter l'utilisation à certains types de marchés.***

Amendment

Les États membres ***prévoient*** la possibilité, pour les entités adjudicatrices, de mettre en œuvre des partenariats d'innovation tels que régis par la présente directive.

Amendment 483

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.

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 484

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).***

Or. en

Justification

This amendment improves the new innovation partnerships procedure.

Amendment 485

Frank Engel

Proposal for a directive

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

Text proposed by the Commission

Amendment

Les droits de propriété intellectuelle ne

sont concédés que pour permettre au pouvoir adjudicateur d'exploiter le résultat des phases précédentes, conformément à l'objet du partenariat en cas de changement de contractant au cours de la procédure, pour limiter la portée de cette acquisition des droits à l'égard de l'entreprise évincée.

Des clauses de propriété intellectuelle doivent définir clairement les droits et obligations de chacune des parties en présence.

Or. fr

Amendment 486

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 2

Text proposed by the Commission

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*.

Amendment

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 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

Ibid.

Amendment 487

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 fulfill the 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 488

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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).

Amendment

In selecting candidates, contracting **entities** 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 489

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 490

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,***

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***

including those incurred in developing an innovative solution, and to achieve an adequate profit. *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 491

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 43 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 492

Marc Tarabella

Proposal for a directive

Article 44 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

Les entités adjudicatrices peuvent recourir à une procédure négociée sans mise en concurrence préalable dans les cas suivants:

Il est interdit aux entités adjudicatrices d'utiliser la procédure négociée sans publicité pour négociier exclusivement le prix des prestations. Les entités adjudicatrices peuvent recourir à une procédure négociée sans mise en concurrence préalable dans les cas

suivants:

Or. fr

Amendment 493
Sergio Gaetano Cofferati

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

Text proposed by the Commission

(a) quando, in risposta a una procedura con previa indizione di gara, non sia pervenuta alcuna offerta o alcuna offerta appropriata o alcuna domanda di partecipazione, purché le condizioni iniziali dell'appalto non siano *sostanzialmente* modificate;

Amendment

(a) quando, in risposta a una procedura con previa indizione di gara, non sia pervenuta alcuna offerta o alcuna offerta appropriata o alcuna domanda di partecipazione, purché le condizioni iniziali dell'appalto non siano modificate;

Or. it

Amendment 494
Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafal Trzaskowski

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

Text proposed by the Commission

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

Amendment

(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 495
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

*(i) assenza di concorrenza per motivi
tecnici;*

soppresso

Or. it

Amendment 496
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 497
Cornelis de Jong, Mikael Gustafsson

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 498
Peter Simon

Proposal for a directive

Article 44 – paragraph 1 – point d – point i

Text proposed by the Commission

i) nicht vorhandener Wettbewerb aus technischen Gründen;

Amendment

i) nicht vorhandener Wettbewerb aus **rechtlichen oder** technischen Gründen;

Or. de

Amendment 499

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 500

Evelyne Gebhardt

Proposal for a directive

Article 44 – paragraph 1 – point d – paragraph 1

Text proposed by the Commission

Diese Ausnahme gilt nur dann, wenn **es keine vernünftige Alternative oder Ersatzlösung gibt und** der mangelnde Wettbewerb nicht das Ergebnis einer künstlichen Einschränkung der Auftragsvergabeparameter ist;

Amendment

Diese Ausnahme gilt nur dann, wenn der mangelnde Wettbewerb nicht das Ergebnis einer künstlichen Einschränkung der Auftragsvergabeparameter ist;

Or. de

Amendment 501

Marc Tarabella

Proposal for a directive

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

Text proposed by the Commission

Amendment

(dbis) Lorsqu'un opérateur économique prend l'initiative de proposer à une entité adjudicatrice un partenariat d'innovation en vue d'établir un partenariat structuré pour le développement d'un produit, de services ou de travaux innovants et d'acquiescer ensuite les fournitures, services ou travaux résultants, à condition qu'ils correspondent aux niveaux de performance et aux coûts convenus.

Or. fr

Amendment 502

Heide Rühle

Proposal for a directive

Article 44 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(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;

(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 503

Małgorzata 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 504
Peter Simon

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

Text proposed by the Commission

(e) soweit dies unbedingt erforderlich ist, wenn äußerst dringende Gründe im Zusammenhang mit Ereignissen **höherer Gewalt** es nicht zulassen, die Fristen einzuhalten, die für die offenen, die nichtoffenen oder die Verhandlungsverfahren mit vorherigem Aufruf zum Wettbewerb vorgeschrieben sind. Die angeführten Umstände zur Begründung der äußersten Dringlichkeit dürfen auf keinen Fall den Vergabestellen zuzuschreiben sein;

Amendment

(e) soweit dies unbedingt erforderlich ist, wenn äußerst dringende Gründe im Zusammenhang mit **für den öffentlichen Auftraggeber nicht vorhersehbaren** Ereignissen es nicht zulassen, die Fristen einzuhalten, die für die offenen, die nichtoffenen oder die Verhandlungsverfahren mit vorherigem Aufruf zum Wettbewerb vorgeschrieben sind. Die angeführten Umstände zur Begründung der äußersten Dringlichkeit dürfen auf keinen Fall den Vergabestellen zuzuschreiben sein;

Or. de

Amendment 505

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 506

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 507
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 508
Jürgen Creutzmann

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

Text proposed by the Commission

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, ***an arrangement with creditors*** or a similar procedure under national laws or regulations;

(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 509

Heide Rühle

Proposal for a directive

Article 44 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 510

Sergio Gaetano Cofferati

Proposal for a directive

Article 44 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

Se un ente aggiudicatore decide, ai sensi di questo Articolo, di avvalersi della procedura negoziata senza pubblicazione preventiva, fornisce all'organo di vigilanza di cui all'Articolo 93 una relazione dettagliata in cui giustifica questa scelta ed in cui sono contenuti i

documenti di appalto e le informazioni correlate, e, nel caso in cui si voglia ricorrere alla procedura negoziata senza pubblicazione preventiva in base al punto (a) del Paragrafo 1, i documenti di appalto della gara precedente.

Or. it

Amendment 511

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

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.*

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.

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 512

Małgorzata Handzlik, Róža 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 513

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 514

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 ***deleted***

cases duly justified, in particular by the subject of the framework agreement.

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 515

Heide Rühle

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. ***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 516

Frank Engel, Constance Le Grip

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

La durée d'un accord-cadre ne dépasse pas quatre ans, sauf ***dans des cas exceptionnels dûment justifiés, notamment*** par l'objet de

Amendment

La durée d'un accord-cadre ne dépasse pas quatre ans, sauf ***s'il a pour objet des prestations d'une durée supérieure à***

l'accord-cadre.

quatre ans ou si un tel dépassement est justifié par la nécessité pour les opérateurs économiques de procéder à des investissements dont la durée d'amortissement est supérieure à quatre ans ou qui sont liés à l'embauche de personnel apte à effectuer les prestations ou à la formation de leur personnel afin de permettre d'effectuer les prestations.

Or. fr

Amendment 517

Lara Comi

Proposal for a directive

Article 45 – paragraph 1 – subparagraph 3

Text proposed by the Commission

La durata di un accordo quadro non supera i quattro anni, salvo *in casi eccezionali debitamente motivati, in particolare dall'oggetto dell'accordo quadro.*

Amendment

La durata di un accordo quadro non supera i quattro anni, salvo *che per la natura specifica dell'oggetto dell'accordo sia necessario stabilire una durata superiore.*

Or. it

Amendment 518

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 519

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

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

Amendment 520
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 521
Pablo Arias Echeverría

Proposal for a directive
Article 45 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Las entidades adjudicadoras no utilizarán los acuerdos marco de forma abusiva o de manera que la competencia se vea obstaculizada, restringida o falseada.

Amendment

Las entidades adjudicadoras no utilizarán los acuerdos marco de forma abusiva o de manera que la competencia se vea obstaculizada, restringida o falseada, ***debiendo justificar las cláusulas introducidas en los pliegos que hacen referencia a estas premisas dejando claras sus interpretaciones.***

Or. es

Amendment 522
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 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.

Amendment

deleted

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 523

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 524

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 525

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 526

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

Proposal for a directive

Article 45 – paragraph 4

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 527

Matteo Salvini, Francesco Enrico Speroni

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

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 528

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 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 529

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 530

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 531

Pablo Arias Echeverría

Proposal for a directive

Article 45 – paragraph 5 – point b

Text proposed by the Commission

(b) las entidades adjudicadoras fijarán un plazo suficiente para presentar las ofertas relativas a cada contrato específico teniendo en cuenta factores como la complejidad del objeto del contrato y el tiempo necesario para el envío de la oferta;

Amendment

(b) las entidades adjudicadoras fijarán un plazo suficiente para presentar las ofertas relativas a cada contrato específico teniendo en cuenta factores como la complejidad del objeto del contrato y el tiempo necesario para el envío de la oferta.
El plazo deberá ser superior a quince días hábiles si es necesario visitar distintas instalaciones para presentar las ofertas.

Or. es

Amendment 532

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.

Amendment 533

Cornelis de Jong

Proposal for a directive

Article 46 – paragraph 1

Text proposed by the Commission

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.

Amendment

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.

Or. en

Amendment 534

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 535
Cornelis de Jong

Proposal for a directive
Article 46 – paragraph 6 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 536
Cornelis de Jong

Proposal for a directive
Article 46 – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) where the system is terminated, a contract award notice referred to in Article 64.

deleted

Or. en

Amendment 537
Heide Rühle

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

Text proposed by the Commission

Amendment

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

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 538

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

Proposal for a directive

Article 47 – paragraph 113 – subparagraph 1

Text proposed by the Commission

Die Vergabestellen können auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden.

Amendment

Die Vergabestellen können **für voll standardisierte Liefer- und Dienstleistungen** auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden.

Or. de

Justification

Elektronische Auktionen können für voll standardisierte Liefer- und Dienstleistungen sinnvoll, in komplexen Vergaben dagegen in aller Regel ungeeignet oder gar kontraproduktiv sein. Für Bauvergaben sind sie strukturell nicht geeignet.

Amendment 539

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.***

Amendment 540

Marc Tarabella

Proposal for a directive

Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Les entités adjudicatrices peuvent recourir à des enchères électroniques où sont présentés de nouveaux prix, révisés à la baisse, et/ou de nouvelles valeurs portant sur certains éléments des offres.

Amendment

Les entités adjudicatrices peuvent recourir à des enchères électroniques ***seulement pour l'achat de biens standardisées***, où sont présentés de nouveaux prix, révisés à la baisse, et/ou de nouvelles valeurs portant sur certains éléments des offres.

Or. fr

Amendment 541

Barbara Weiler

Proposal for a directive

Article 47 – paragraph 113 – subparagraph 1

Text proposed by the Commission

Die Vergabestellen können auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden.

Amendment

Die Vergabestellen können auf elektronische Auktionen zurückgreifen, bei denen neue, nach unten revidierte Preise und/oder neue, auf bestimmte Komponenten der Angebote abstellende Werte vorgelegt werden. ***Der Anwendungsbereich der elektronischen Auktion ist auf voll standardisierte Liefer- und Dienstleistungen beschränkt.***

Or. de

Amendment 542

Lara Comi

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

Text proposed by the Commission

Amendment

Questo articolo non si applica ai contratti pubblici di lavori.

Or. it

Amendment 543
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 provided for in the first subparagraph of Article 76(5).

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).

Or. en

Amendment 544
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 48 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Gli Stati membri possono ***rendere obbligatorio*** l'uso di cataloghi elettronici per ***alcuni tipi*** di appalti.

Gli Stati membri possono ***prevedere*** l'uso di cataloghi elettronici per ***gli appalti di servizi e forniture***. ***Questo articolo non si applica ai contratti pubblici di lavori.***

Or. it

Amendment 545

Małgorzata Handzlik, Rafał Trzaskowski, Róża 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 546

Małgorzata Handzlik, Rafał Trzaskowski, Róża 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 547
Heide Rühle

Proposal for a directive
Article 50

Text proposed by the Commission

Amendment

Article 50

deleted

Ancillary purchasing activities

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

Or. en

Amendment 548
Heide Rühle

Proposal for a directive
Article 51 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 549
Heide Rühle

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

Text proposed by the Commission

Amendment

Where ***one contracting entity alone***

Where the ***conduct of a*** procurement

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.

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 550
Heide Rühle

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 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 551
Raffaele Baldassarre

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

Text proposed by the Commission

Tuttavia, se la procedura di aggiudicazione dell'appalto e l'esecuzione dei contratti che ne derivano sono effettuate da più di uno degli enti aggiudicatori coinvolti, ciascuno

Amendment

Tuttavia, se la procedura di aggiudicazione dell'appalto e l'esecuzione dei contratti che ne derivano sono effettuate da più di uno degli enti aggiudicatori coinvolti, ciascuno

di essi continua a essere responsabile dell'adempimento degli obblighi che gli derivano dalla presente direttiva nei confronti delle fasi da esso condotte.

di essi continua a essere responsabile dell'adempimento degli obblighi che gli derivano dalla presente direttiva nei confronti delle fasi da esso condotte.*Gli Stati Membri precisano, conformemente al rispettivo diritto nazionale, e nel rispetto del diritto comunitario, le condizioni di applicazione del presente articolo*

Or. it

Amendment 552

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 52

Text proposed by the Commission

Amendment

Article 52

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) No¹ 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

¹ OJ L 210 of 31.7.2006, p. 19

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 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 553

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

¹ OJ L 76, 23.03.1992, p. 14.

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;

(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 554

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

Proposal for a directive
Article 52 – paragraph 2

Text proposed by the Commission

2. Several contracting entities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In

Amendment

deleted

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.

Or. en

Amendment 555

Małgorzata Handzlik, Rafał Trzaskowski, Róża 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 agreement that determines

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

Or. en

Amendment 556

Andreas Schwab

Proposal for a directive

Article 52 – paragraph 138 – subparagraph 2

Text proposed by the Commission

Amendment

Bei der Festlegung des anwendbaren einzelstaatlichen Rechts gemäß Buchstabe a **können** die Vergabestellen die Bestimmungen eines Mitgliedstaats wählen, in dem zumindest eine der beteiligten Vergabestellen belegen ist.

Bei der Festlegung des anwendbaren einzelstaatlichen Rechts gemäß Buchstabe a **müssen** die Vergabestellen die Bestimmungen eines Mitgliedstaats wählen, in dem zumindest eine der beteiligten Vergabestellen belegen ist.

Or. de

Justification

Die Rechtswahlmöglichkeit der Parteien sollte an die Sachgesetzlichkeiten des Auftrags geknüpft werden.

Amendment 557

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

Proposal for a directive

Article 52 – paragraph 5

Text proposed by the Commission

Amendment

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: ***deleted***

(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 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 558

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

Or. en

Amendment 559

Małgorzata Handzlik, Róža 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 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:

deleted

(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 560

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafal 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 561

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

Proposal for a directive

Article 52 – paragraph 7

Text proposed by the Commission

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.

Amendment

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 562

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

Proposal for a directive

Article 52 – paragraph 9

Text proposed by the Commission

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.**

Amendment

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 563
Heide Rühle

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

Text proposed by the Commission

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.

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/or*** to inform economic operators of their procurement plans and requirements.

Or. en

Amendment 564
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 565

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.

Or. en

Amendment 566

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.

Or. en

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 567
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 568
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 569
Marc Tarabella

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

Text proposed by the Commission

Ces caractéristiques peuvent également se référer au processus spécifique de production ou de fourniture des travaux, des fournitures ou des services, ou à un quelconque stade de leur cycle de vie ***comme visé*** à l'article 2.

Amendment

Ces caractéristiques peuvent également se référer au processus spécifique de production ou de fourniture des travaux, des fournitures ou des services, ou à un quelconque stade de leur cycle de vie ***et au processus de production socialement durable visés*** à l'article 2 ***points (22), (22)***

bis) et (22 ter).

Or. fr

Amendment 570
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 571
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

Diese Merkmale können sich auch auf den spezifischen Produktionsprozess bzw. die spezifische Erbringung der angeforderten Bauleistungen, Lieferungen oder Dienstleistungen oder jedes sonstige in

Amendment

Diese Merkmale können sich auch auf den spezifischen Produktionsprozess bzw. die spezifische Erbringung der angeforderten Bauleistungen, Lieferungen oder Dienstleistungen oder jedes sonstige in

Artikel 2 Absatz 22 genannte
Lebenszyklusstadium beziehen.

Artikel 2 Absatz 22 genannte
Lebenszyklusstadium beziehen. *Als
technische Spezifikationen sollen auch
berücksichtigt werden:*

*(a) soziale Kriterien wie die Beachtung
würdiger
Arbeitsbedingungen, Vorschriften über
Gesundheit und Sicherheit,
Tarifverhandlungen, Gleichstellung der
Geschlechter (z.B. gleiche Entlohnung,
Vereinbarkeit von Arbeits- und
Privatleben), soziale Integration,
einschließlich der
Beschäftigungsmöglichkeiten für
behinderte, benachteiligte oder sozial
schwache Arbeitnehmer (wie z.B.
Langzeitarbeitslose, Roma, Migranten
oder junge und ältere Arbeitnehmer),
Zugang zu Maßnahmen der beruflichen
Fortbildung, Einbeziehung und
Konsultation der Nutzer,*

*(b) soziale Belange im Zusammenhang
mit den externen sozialen Kosten, die
direkt mit dem Lebenszyklus in
Verbindung stehen und zu denen
beispielsweise die Auswirkungen der
Produktion auf die Umgebung und die
angrenzenden Gemeinschaften gehören;*

*(c) bei Dienstleistungsaufträgen und
Aufträgen, die die Planung von
Bauleistungen umfassen, die
Organisation, Qualifikation und
Erfahrung der Mitarbeiter, die für die
Ausführung des Auftrags eingesetzt
werden.*

Or. de

Amendment 572
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 54 – paragraph 1 – subparagraph 4

Text proposed by the Commission

Para toda contratación cuyo objeto esté destinado a ser utilizado por personas, ya sea el público en general o el personal de la entidad adjudicadora, estas especificaciones técnicas se redactarán, salvo en casos debidamente justificados, teniendo en cuenta los criterios de accesibilidad para personas con discapacidad o el diseño para todos los usuarios.

Amendment

Para toda contratación cuyo objeto esté destinado a ser utilizado por personas, ya sea el público en general o el personal de la entidad adjudicadora, estas especificaciones técnicas se redactarán, salvo, ***excepcionalmente***, en casos debidamente justificados, teniendo en cuenta los criterios de accesibilidad para personas con discapacidad o el diseño para todos los usuarios.

Or. es

Amendment 573

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 574

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

Amendment

Where mandatory accessibility, ***environmental or social*** standards are adopted by a legislative act of the Union, technical specifications shall, as far as

defined by reference thereto.

accessibility, *environmental or social* criteria are concerned, be defined by reference thereto.

Or. en

Amendment 575

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 576

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 54 – paragraph 147 – point 1 (new)

Text proposed by the Commission

Amendment

Die Verpflichtungen in Bezug auf die sozialen Gegebenheiten und Beschäftigungsbedingungen, wie die Gesundheit und Sicherheit am Arbeitsplatz, die soziale Sicherheit und die Arbeitsbedingungen, so wie sie in EU-Rechtsvorschriften, nationalen Gesetzen, Regelungen oder Verwaltungsvorschriften, Schiedssprüchen, Kollektivvereinbarungen und -verträgen sowie den in Anhang XIV genannten internationalen arbeitsrechtlichen

Bestimmungen festgelegt sind, die am Ort der Leistungserbringung gelten, werden von den öffentlichen Auftraggebern in den technischen Spezifikationen als Teil der unabdingbaren Anforderungen bei der Vergabe des Auftrags eindeutig dargelegt.

Or. de

Amendment 577
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 578
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 579

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 54 – paragraph 3 – point a

Text proposed by the Commission

a) in Form von Leistungs- oder Funktionsanforderungen, einschließlich Umweltmerkmale, sofern die Parameter hinreichend genau sind, um den Bietern ein klares Bild vom Auftragsgegenstand zu vermitteln und **der Vergabestelle** die Erteilung des Zuschlags zu ermöglichen;

Amendment

a) in Form von Leistungs- oder Funktionsanforderungen, einschließlich Umweltmerkmale, **und soziale Merkmale** sofern die Parameter hinreichend genau sind, um den Bietern ein klares Bild vom Auftragsgegenstand zu vermitteln und **dem öffentlichen Auftraggeber** die Erteilung des Zuschlags zu ermöglichen; **einschließlich, in Einklang mit den Anforderungen in Bezug auf die Lebenszyklusmerkmale der angeforderten Bauleistungen, Lieferungen oder Dienstleistungen;**

Or. de

Amendment 580

Heide Rühle

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

Amendment

(b) by reference to technical specifications 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

accompanied by the words ‘or equivalent’;

reference shall be accompanied by the words ‘or equivalent’;

Or. en

Amendment 581

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 582

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 583
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*** 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 a 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".

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 584

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

Amendment

4. ***On an exeptional 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’.

Amendment 585

Heide Rühle

Proposal for a directive

Article 54 – paragraph 5

Text proposed by the Commission

5. Where a contracting entity uses the

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 *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.

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 586

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 587

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 588
Heide Rühle

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

Text proposed by the Commission

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:

Amendment

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 589
Heide Rühle

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

Text proposed by the Commission

(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;

Amendment

(a) the requirements *to be met in order to 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 590

Frank Engel

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) les critères d'obtention du label ***ne concernent que des caractéristiques liées à l'objet du marché et*** sont appropriés pour définir les caractéristiques des travaux, fournitures ou services qui font l'objet du marché;

Amendment

(a) les critères d'obtention du label sont appropriés pour définir les caractéristiques des travaux, fournitures ou services qui font l'objet du marché;

Or. fr

Amendment 591

Heide Rühle

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(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;

Amendment

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

Or. en

Amendment 592

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

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 may participate,

organisations *have a substantial role*.
Government bodies may participate *but are not obligatory*;

Or. en

Amendment 593

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) que las etiquetas se establezcan en un procedimiento abierto y transparente en el que puedan participar todas las partes implicadas, como organismos públicos, consumidores, fabricantes, distribuidores y organizaciones medioambientales;

Amendment

(c) que las etiquetas se establezcan en un procedimiento abierto y transparente en el que puedan participar todas las partes implicadas, como organismos públicos, consumidores, fabricantes, distribuidores, organizaciones medioambientales y *sociales*;

Or. es

Amendment 594

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

Or. en

Amendment 595

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 596

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 597

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

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**

other appropriate means of proof.

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 598

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Las entidades adjudicadoras que exijan un etiqueta específica deberán aceptar todas las etiquetas equivalentes que cumplan los requisitos de la etiqueta indicada por las entidades adjudicadoras. En el caso de los productos que no lleven la etiqueta, las entidades adjudicadoras deberán aceptar, asimismo, un expediente técnico del fabricante u otro medio de prueba adecuado.

Amendment

Las entidades adjudicadoras que exijan un etiqueta específica deberán aceptar todas las etiquetas equivalentes que cumplan los requisitos de la etiqueta indicada por las entidades adjudicadoras. En el caso de los productos que no lleven la etiqueta, las entidades adjudicadoras deberán aceptar, asimismo, un expediente técnico del fabricante u otro medio de prueba adecuado. *Se favorecerán o primarán aquellas etiquetas, expedientes técnicos u otros medios de prueba en cuyo proceso de desarrollo, certificación o verificación hayan participado organismos gubernamentales, organizaciones medioambientales o sociales.*

Amendment 599

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 600

Raffaele Baldassarre

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Gli enti aggiudicatori che esigono un'etichetta specifica accettano tutte le etichette equivalenti che rispondono ai requisiti indicati dagli enti aggiudicatori. Per forniture non munite di etichetta, gli enti aggiudicatori accettano anche una documentazione tecnica del fabbricante o qualsiasi altro mezzo di prova appropriato.

Amendment

Gli enti aggiudicatori che esigono un'etichetta specifica accettano tutte le etichette equivalenti, ***ovvero quelle basate su medesimi criteri di valutazione e metodi di misurazione***, che rispondono ai requisiti indicati dagli enti aggiudicatori. Per forniture non munite di etichetta, gli enti aggiudicatori accettano anche una documentazione tecnica del fabbricante o qualsiasi altro mezzo di prova appropriato.

Or. it

Amendment 601

Frank Engel

Proposal for a directive

Article 55 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

La preuve d'équivalence par rapport au label demandé revient au soumissionnaire.

Or. fr

Amendment 602

Heide Rühle

Proposal for a directive

Article 56 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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 the technical specifications.

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 603

Heide Rühle

Proposal for a directive

Article 56 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Where contracting entities require the submission of certificates drawn up by ***recognised bodies attesting conformity***

Where contracting entities require the submission of certificates drawn up by a ***specific assessment body*** certificates from

with a particular technical specification,
certificates from equivalent other
recognised bodies shall also be accepted by
the contracting entities.

equivalent other recognised bodies shall
also be accepted by the contracting entities.

Or. en

Amendment 604
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 56 – paragraph 2

Text proposed by the Commission

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.***

deleted

Or. en

Amendment 605
Heide Rühle

Proposal for a directive
Article 56 – paragraph 2

Text proposed by the Commission

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.

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 606

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 607

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

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

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.

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 608
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 609
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

Amendment

Contracting entities ***shall*** take account of variants which are submitted by a tenderer

and meet the minimum requirements specified by the contracting entities.

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 610

Frank Engel, Andreas Schwab

Proposal for a directive

Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Les *entités adjudicatrices* peuvent *prendre en considération* des variantes *présentées par des soumissionnaires lorsque celles-ci répondent aux exigences minimales requises par ces entités adjudicatrices.*

Amendment

Les *soumissionnaires* peuvent *présenter* des variantes *avec une proposition de base.*

Or. fr

Amendment 611

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 612
Robert Rochefort

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

Text proposed by the Commission

Les entités adjudicatrices peuvent ***prendre en considération*** des variantes ***présentées par des soumissionnaires lorsque celles-ci répondent aux exigences minimales requises par ces entités adjudicatrices.***

Amendment

Les entités adjudicatrices peuvent ***interdire aux soumissionnaires de présenter*** des variantes.

Or. fr

Amendment 613
Marc Tarabella

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

Text proposed by the Commission

Les entités adjudicatrices peuvent prendre en considération des variantes présentées par des soumissionnaires lorsque celles-ci répondent aux exigences minimales requises par ces entités adjudicatrices.

Amendment

Une variante est un mode alternatif de conception, d'exécution ou de financement du marché.

Les entités adjudicatrices peuvent prendre en considération des variantes présentées par des soumissionnaires lorsque celles-ci répondent aux exigences minimales requises par ces entités adjudicatrices.

Or. fr

Amendment 614
Cornelis de Jong, Mikael Gustafsson

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

Text proposed by the Commission

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. 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.

deleted

Or. en

Amendment 615

Heide Rühle

Proposal for a directive

Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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. *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.*

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 616

Frank Engel, Andreas Schwab

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

Text proposed by the Commission

Les entités adjudicatrices indiquent dans le cahier des charges *si elles autorisent ou non les variantes, et, lorsqu'elles les autorisent, les* exigences minimales que les variantes doivent respecter ainsi que les modalités pour leur soumission. *Dans le cas où des variantes sont autorisées, les* entités adjudicatrices s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

Amendment

Les entités adjudicatrices indiquent dans le cahier des charges les exigences minimales que les variantes doivent respecter ainsi que les modalités pour leur soumission. *Les* entités adjudicatrices s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

Or. fr

Amendment 617
Robert Rochefort

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

Text proposed by the Commission

Les entités adjudicatrices indiquent dans le cahier des charges si elles *autorisent* ou non les variantes, *et, lorsqu'elles les autorisent, les* exigences minimales que les variantes doivent respecter ainsi que les modalités pour leur soumission. *Dans le cas où des variantes sont autorisées, les entités adjudicatrices* s'assurent aussi que les critères d'attribution retenus puissent être appliqués de façon pertinente tant aux variantes qui respectent ces exigences minimales qu'aux offres conformes qui ne sont pas des variantes.

Amendment

Les entités adjudicatrices indiquent dans le cahier des charges si elles *interdisent* ou non les variantes. *A défaut de cette indication, les variantes sont autorisées.*

Lorsque les variantes ne sont pas interdites, les *autorités adjudicatrices précisent les* exigences minimales que les variantes doivent respecter ainsi que les modalités pour leur soumission. *Elles* s'assurent aussi

que les critères d'attribution retenus
puissent être appliqués de façon pertinente
tant aux variantes qui respectent ces
exigences minimales qu'aux offres
conformes qui ne sont pas des variantes.

Or. fr

Amendment 618
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 contract.

Amendment

deleted

Or. en

Amendment 619
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 620

Frank Engel, Andreas Schwab

Proposal for a directive

Article 58 – paragraph 2

Text proposed by the Commission

2. Dans les procédures de passation de marchés de fournitures ou de services, les entités adjudicatrices ***qui ont autorisé des variantes*** ne rejettent pas une variante pour la seule raison qu'elle aboutirait, si elle était retenue, respectivement soit à un marché de services au lieu d'un marché de fournitures, soit à un marché de fournitures au lieu d'un marché de services.

Amendment

2. Dans les procédures de passation de marchés de fournitures ou de services, les entités adjudicatrices ne rejettent pas une variante pour la seule raison qu'elle aboutirait, si elle était retenue, respectivement soit à un marché de services au lieu d'un marché de fournitures, soit à un marché de fournitures au lieu d'un marché de services.

Or. fr

Amendment 621

Robert Rochefort

Proposal for a directive

Article 58 – paragraph 2

Text proposed by the Commission

2. Dans les procédures de passation de marchés de fournitures ou de services, les entités adjudicatrices qui ont ***autorisé des variantes*** ne ***rejetent pas*** une variante pour la seule raison qu'elle aboutirait, si elle était retenue, respectivement soit à un marché de services au lieu d'un marché de fournitures, soit à un marché de fournitures au lieu d'un marché de services.

Amendment

2. Dans les procédures de passation de marchés de fournitures ou de services, les entités adjudicatrices qui ***n'ont pas interdit les variantes*** ne ***peuvent rejeter*** une variante pour la seule raison qu'elle aboutirait, si elle était retenue, respectivement soit à un marché de services au lieu d'un marché de fournitures, soit à un marché de fournitures au lieu d'un marché de services.

Or. fr

Amendment 622

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.***

Or. en

Amendment 623

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 624

Marc Tarabella

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Les marchés peuvent être divisés en lots
*homogènes ou hétérogènes. L'article 13,
paragraphe 7, s'applique.*

Amendment

Les marchés peuvent être divisés en lots. .

Or. fr

Amendment 625

**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

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

Amendment

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 626

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Gli appalti possono essere suddivisi in lotti omogenei o eterogenei. L'articolo 13, paragrafo 7, è applicabile.

Amendment

Gli appalti possono essere suddivisi in lotti omogenei o eterogenei. ***Per gli appalti di valore pari o superiore alle soglie determinate conformemente all'articolo 12, l'ente aggiudicatore fornisce nel bando di gara o nell'invito a confermare interesse un chiarimento specifico delle sue ragioni riguardanti la scelta di suddividere o non suddividere l'appalto in lotti.*** L'articolo 13, paragrafo 7, è applicabile.

Or. it

Amendment 627

Cornelis de Jong

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

deleted

Or. en

Amendment 628

Marc Tarabella

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Dans l'avis de marché, dans l'invitation à

Amendment

Dans l'avis de marché ***ou*** dans l'invitation à

confirmer l'intérêt *ou, si le moyen de mise en concurrence est un avis sur l'existence d'un système de qualification, dans l'invitation à soumissionner ou à négocier*, les entités adjudicatrices indiquent si *les offres sont limitées* ou non à un lot ou à un certain nombre de lots.

confirmer l'intérêt, les entités adjudicatrices indiquent si *le marché est limité* ou non à un lot ou à un certain nombre de lots. *Elles choisissent librement le nombre de lots, en tenant compte notamment des caractéristiques techniques des prestations demandées, de la structure du secteur économique en cause et, le cas échéant, des règles applicables à certaines professions.*

Or. fr

Amendment 629

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

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.*

Amendment

*Where the contracting entity limits the 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 630

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 631
Marc Tarabella

Proposal for a directive
Article 59 – paragraph 2

Text proposed by the Commission

Amendment

2. Les entités adjudicatrices peuvent, même lorsqu'elles ont indiqué la possibilité de soumissionner pour tous les lots, limiter le nombre de lots qui peuvent être attribués à un même soumissionnaire, à condition que ce nombre maximal soit inscrit dans l'avis de marché ou dans l'invitation à confirmer l'intérêt. Les entités adjudicatrices déterminent et indiquent dans les documents de marché les critères ou règles objectifs et non discriminatoires

2. Les candidats ne peuvent pas présenter des offres variables selon le nombre de lots susceptibles d'être obtenus. Les entités adjudicatrices limitent le nombre de lots qui peuvent être attribués à un même soumissionnaire, à condition que ce nombre maximal soit inscrit dans l'avis de marché ou dans l'invitation à confirmer l'intérêt. Les entités adjudicatrices déterminent et indiquent dans les documents de marché les critères ou règles

qu'elles prévoient d'utiliser pour l'attribution des différents lots ***lorsque l'application des critères d'attribution retenus conduirait à attribuer à un soumissionnaire un nombre de lots supérieur au nombre maximal fixé.***

objectifs et non discriminatoires qu'elles prévoient d'utiliser pour l'attribution des différents lots.

Or. fr

Amendment 632

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

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

Simplification of procurement rules.

Amendment 633

Małgorzata Handzlik, Róža 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 634
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 635
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 636
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 *deleted*

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

Amendment 637

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 638

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 to 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 639

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 640

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 641

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 642

Frank Engel, Andreas Schwab

Proposal for a directive

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

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 643

Andreas Schwab

Proposal for a directive

Article 64 – paragraph 1 – subparagraph 2 a (new)

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 644

Lara Comi

Proposal for a directive

Article 65 – paragraph 3

Text proposed by the Commission

3. Gli avvisi di indizione di gara di cui all'articolo 39, paragrafo 2, sono pubblicati per esteso in una delle lingue ufficiali dell'Unione, scelta dall'ente aggiudicatore. Il testo pubblicato in tale lingua originale è l'unico facente fede. Una sintesi degli elementi importanti di ciascun avviso è pubblicata ***nelle altre lingue ufficiali***.

Amendment

3. Gli avvisi di indizione di gara di cui all'articolo 39, paragrafo 2, sono pubblicati per esteso in una delle lingue ufficiali dell'Unione, scelta dall'ente aggiudicatore. Il testo pubblicato in tale lingua originale è l'unico facente fede. Una sintesi degli elementi importanti di ciascun avviso è pubblicata ***almeno in un'altra lingua ufficiale dell'Unione Europea a scelta dall'ente aggiudicatore***.

Or. it

Amendment 645

Raffaele Baldassarre

Proposal for a directive

Article 65 – paragraph 3

Text proposed by the Commission

3. Gli avvisi di indizione di gara di cui all'articolo 39, paragrafo 2, sono pubblicati per esteso in una delle lingue ufficiali dell'Unione, scelta dall'ente aggiudicatore. Il testo pubblicato in tale lingua originale è l'unico facente fede. Una sintesi degli elementi importanti di ciascun avviso è pubblicata ***nelle altre lingue ufficiali***.

Amendment

3. Gli avvisi di indizione di gara di cui all'articolo 39, paragrafo 2, sono pubblicati per esteso in una delle lingue ufficiali dell'Unione, scelta dall'ente aggiudicatore. Il testo pubblicato in tale lingua originale è l'unico facente fede. Una sintesi degli elementi importanti di ciascun avviso è pubblicata ***in inglese***.

Or. it

Amendment 646

Heide Rühle

Proposal for a directive
Article 66 – paragraph 1

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Justification

Bureaucratic and an unnecessary burden and source of mistakes.

Amendment 647
Heide Rühle

Proposal for a directive
Article 67 – paragraph 1

Text proposed by the Commission

Amendment

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.

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, adress etc.)

Amendment 648

Marc Tarabella

Proposal for a directive

Article 68 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Dans les procédures restreintes, ***les partenariats d'innovation*** et les procédures négociées avec mise en concurrence préalable, les entités adjudicatrices invitent simultanément et par écrit les candidats retenus à présenter leurs offres ou à négocier.

Amendment

Dans les procédures restreintes et les procédures négociées avec mise en concurrence préalable, les entités adjudicatrices invitent simultanément et par écrit les candidats retenus à présenter leurs offres ou à négocier.

Or. fr

Amendment 649

Pablo Arias Echeverría

Proposal for a directive

Article 69 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***A petición de la parte interesada, las*** entidades ***adjudicadoras*** comunicarán, lo antes posible, y, en cualquier caso, en un plazo de 15 días a partir de la recepción de una solicitud por escrito:

Amendment

2. ***Las*** entidades ***adjudicadores*** comunicarán, lo antes posible, ***a partir de la fecha de la adjudicación de la concesión, de la desestimación de la solicitud de participación, de la desestimación de la oferta*** y, en cualquier caso, en un plazo de 15 días a partir de la recepción de una solicitud por escrito:

Or. es

Amendment 650

Lara Comi

Proposal for a directive
Article 69 – paragraph 2 – point d

Text proposed by the Commission

(d) a ogni offerente che abbia presentato un'offerta selezionabile, lo svolgimento e l'andamento delle trattative e del dialogo con gli offerenti.

Amendment

soppresso

Or. it

Amendment 651
Marc Tarabella

Proposal for a directive
Article 70 – paragraph 3 – introductory part

Text proposed by the Commission

3. Lorsqu'elles choisissent les participants à une procédure restreinte ou négociée ***ou à un partenariat d'innovation***, en prenant leur décision quant à la qualification ou lorsque les critères et règles sont mis à jour, les entités adjudicatrices ne peuvent:

Amendment

3. Lorsqu'elles choisissent les participants à une procédure restreinte ou négociée, en prenant leur décision quant à la qualification ou lorsque les critères et règles sont mis à jour, les entités adjudicatrices ne peuvent:

Or. fr

Amendment 652
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

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

law or *of* the international social and environmental law provisions listed in Annex XIV.

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 653

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 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, at least in an equivalent manner, with obligations 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 654

Małgorzata Handzlik, Róža 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

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

law or of the international social and environmental law provisions listed in Annex XIV.

the international social and environmental law provisions listed in Annex XIV.

Or. en

Amendment 655

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 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, 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 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 656
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 657
Robert Rochefort

Proposal for a directive
Article 70 – paragraph 6

Text proposed by the Commission

6. Dans le cadre de procédures ouvertes, les entités adjudicatrices peuvent décider d'examiner les offres avant de vérifier l'aptitude des soumissionnaires, à condition que les dispositions pertinentes des articles 70 à 79 soient respectées, y compris la règle selon laquelle le marché n'est pas attribué à un soumissionnaire qui aurait dû être exclu conformément à l'article 74 ou qui ne remplit pas les critères de sélection établis par l'entité

Amendment

supprimé

adjudicatrice conformément à l'article 72, paragraphe 1, et à l'article 74.

Or. fr

Amendment 658

Marc Tarabella

Proposal for a directive

Article 70 – paragraph 6

Text proposed by the Commission

Amendment

6. Dans le cadre de procédures ouvertes, les entités adjudicatrices peuvent décider d'examiner les offres avant de vérifier l'aptitude des soumissionnaires, à condition que les dispositions pertinentes des articles 70 à 79 soient respectées, y compris la règle selon laquelle le marché n'est pas attribué à un soumissionnaire qui aurait dû être exclu conformément à l'article 74 ou qui ne remplit pas les critères de sélection établis par l'entité adjudicatrice conformément à l'article 72, paragraphe 1, et à l'article 74.

supprimé

Or. fr

Amendment 659

Raffaele Baldassarre

Proposal for a directive

Article 70 – paragraph 6

Text proposed by the Commission

Amendment

6. Nelle procedure aperte, gli enti aggiudicatori possono decidere che le offerte saranno esaminate prima della verifica dell'idoneità degli offerenti, a condizione che le pertinenti disposizioni degli articoli da 70 a 79 siano osservate, in particolare che il contratto non venga aggiudicato a un offerente che avrebbe

soppresso

*dovuto essere escluso a norma
dell'articolo 74 o che non soddisfa i criteri
di selezione stabiliti dall'ente
aggiudicatore ai sensi dell'articolo 72,
paragrafo 1, e dell'articolo 74.*

Or. it

Amendment 660
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*

Or. en

Amendment 661
Raffaele Baldassarre

Proposal for a directive
Article 70 – paragraph 7

Text proposed by the Commission

Amendment

*7. Alla Commissione è conferito il potere
di adottare atti delegati conformemente
all'articolo 98 per modificare l'elenco che
figura nell'allegato XIV, quando ciò si
dimostri necessario sulla base della
conclusione di nuovi accordi
internazionali o della modifica degli
accordi internazionali vigenti.* *soppresso*

Or. it

Amendment 662

Heide Rühle

Proposal for a directive

Article 72 – paragraph 2

Text proposed by the Commission

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.***

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.

Or. en

Amendment 663

Raffaele Baldassarre

Proposal for a directive

Article 73 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Se le norme e i criteri oggettivi per l'esclusione e la selezione degli operatori economici che richiedono di essere qualificati in un sistema di qualificazione comportano requisiti relativi alle capacità economiche e finanziarie dell'operatore economico o alle sue capacità tecniche e professionali, questi può far valere, se necessario, la capacità di altri soggetti, indipendentemente dalla natura giuridica dei legami con essi. In tal caso l'operatore economico prova all'ente aggiudicatore di

Amendment

Se le norme e i criteri oggettivi per l'esclusione e la selezione degli operatori economici che richiedono di essere qualificati in un sistema di qualificazione comportano requisiti relativi alle capacità economiche e finanziarie dell'operatore economico o alle sue capacità tecniche e professionali, questi può far valere, se necessario, la capacità di altri soggetti, indipendentemente dalla natura giuridica dei legami con essi. In tal caso l'operatore economico prova all'ente aggiudicatore di

disporre di tali mezzi per tutto il periodo di validità del sistema di qualificazione esibendo, ad esempio, l'impegno assunto da tali soggetti a tal fine. ***Nel caso della capacità economica e finanziaria, gli*** enti aggiudicatori possono esigere che l'operatore economico e i soggetti di cui sopra siano solidalmente responsabili dell'esecuzione del contratto.

disporre di tali mezzi per tutto il periodo di validità del sistema di qualificazione esibendo, ad esempio, l'impegno assunto da tali soggetti a tal fine. ***Gli*** enti aggiudicatori possono esigere che l'operatore economico e i soggetti di cui sopra siano solidalmente responsabili dell'esecuzione del contratto.

Or. it

Amendment 664
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 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 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 665
Marc Tarabella

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Les règles et les critères objectifs

Amendment

Les règles et les critères objectifs

d'exclusion et de sélection des opérateurs économiques qui demandent à être qualifiés dans le cadre d'un système de qualification et les règles et les critères objectifs d'exclusion et de sélection des candidats et des soumissionnaires dans des procédures ouvertes, restreintes ou négociées *ou dans des partenariats d'innovation* peuvent inclure les motifs d'exclusion énumérés à l'article 55 de la [directive 2004/18/CE], dans les conditions qui y sont exposées.

d'exclusion et de sélection des opérateurs économiques qui demandent à être qualifiés dans le cadre d'un système de qualification et les règles et les critères objectifs d'exclusion et de sélection des candidats et des soumissionnaires dans des procédures ouvertes, restreintes ou négociées peuvent inclure les motifs d'exclusion énumérés à l'article 55 de la [directive 2004/18/CE], dans les conditions qui y sont exposées.

Or. fr

Amendment 666

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 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 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 667

Sergio Gaetano Cofferati, Marc Tarabella

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 668
Heide Rühle

Proposal for a directive
Article 74 – paragraph 2

Text proposed by the Commission

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, as provided for under the second subparagraph of paragraph 3 of that Article.

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 Procurement Passport***, as provided for under the second subparagraph of paragraph 3 of that Article.

Or. en

Amendment 669
Heide Rühle

Proposal for a directive
Article 74 – paragraph 3

Text proposed by the Commission

Amendment

3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles 57 to 60 of Directive 2004/18/EC shall apply.

3. For the purpose of applying paragraphs 1 and 2 of this Article, Articles **55** to 60 of Directive 2004/18/EC shall apply.

Amendment 670**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.

Amendment 671**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 672

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 673

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

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*:

criteria on which contracting entities shall base the award of contracts shall be:

Or. en

Amendment 674

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, *les critères* sur *lesquels* les *entités adjudicatrices* se fondent pour attribuer les marchés *sont*:

Amendment

Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, *le critère* sur *lequel* les *pouvoirs adjudicateurs* se fondent pour attribuer les marchés *publics est l'offre économiquement la plus avantageuse*.

Or. fr

Amendment 675

Robert Rochefort

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, *les critères* sur *lesquels* les entités adjudicatrices se fondent pour attribuer les marchés *sont*:

Amendment

Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, *le critère* sur *lequel* les entités adjudicatrices se fondent pour attribuer les marchés *est celui de l'offre économiquement la plus avantageuse. Lorsque le marché public concerne la fourniture de biens, en particulier de biens standardisés, les pouvoirs adjudicateurs peuvent se fonder sur le critère du coût le plus bas pour attribuer le marché*.

Amendment 676

Marc Tarabella

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, les critères sur lesquels les entités adjudicatrices se fondent pour attribuer les marchés sont:

Amendment

Sans préjudice des dispositions législatives, réglementaires ou administratives nationales relatives à la rémunération de certains services, les critères sur lesquels les entités adjudicatrices se fondent pour attribuer les marchés sont ***basés sur des critères multiples qui déterminent l'offre économiquement la plus avantageuse.***

Or. fr

Amendment 677

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 76 – paragraph 218 – subparagraph 1 – introductory part

Text proposed by the Commission

Die ***Vergabestellen*** wenden unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften bei der Erteilung des Zuschlags ***eines der folgenden Kriterien*** an:

Amendment

Die ***öffentlichen Auftraggeber*** wenden unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften bei der Erteilung des Zuschlags ***das Kriterium des wirtschaftlich günstigsten und nachhaltigsten Angebots*** an.

Or. de

Amendment 678

Barbara Weiler

Proposal for a directive

Article 76 – paragraph 218 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Die Vergabestellen wenden unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften bei der Erteilung des Zuschlags *eines der folgenden Kriterien* an:

Die Vergabestellen wenden unbeschadet der für die Vergütung bestimmter Dienstleistungen geltenden einzelstaatlichen Rechts- und Verwaltungsvorschriften bei der Erteilung des Zuschlags *das Kriterium des wirtschaftlich günstigsten Angebots* an.

Or. de

Amendment 679

Robert Rochefort

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) soit l'offre économiquement la plus avantageuse;

supprimé

Or. fr

Amendment 680

Barbara Weiler

Proposal for a directive

Article 76 – paragraph 218 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) das wirtschaftlich günstigste Angebot;

entfällt

Or. de

Amendment 681

Marc Tarabella

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

*(a) soit l'offre économiquement la plus
avantageuse;*

supprimé

Or. fr

Amendment 682

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 683

Marc Tarabella

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) soit le prix le plus bas.

supprimé

Or. fr

Amendment 684

Robert Rochefort

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) soit le prix le plus bas.

supprimé

Or. fr

Amendment 685
Evelyne Gebhardt

Proposal for a directive
Article 76 – paragraph 218 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) der niedrigste Preis.

entfällt

Or. de

Amendment 686
Barbara Weiler

Proposal for a directive
Article 76 – paragraph 218 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) der niedrigste Preis.

entfällt

Or. de

Amendment 687
Lara Comi

Proposal for a directive
Article 76 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) *costo* più basso.

(b) *prezzo* più basso.

Or. it

Amendment 688
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 689

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Les coûts peuvent être évalués, au choix de l'entité adjudicatrice, soit uniquement sur la base du prix, soit selon une approche coût/efficacité telle que le calcul du coût du cycle de vie, dans les conditions établies à l'article 77.

supprimé

Or. fr

Amendment 690

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 691

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 692

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 76 – paragraph 218 – subparagraph 2

Text proposed by the Commission

Amendment

Je nach Wahl der Vergabestelle können die Kosten entweder nur auf der Grundlage des Preises oder mittels des Kosten-Wirksamkeits-Ansatzes, wie des Lebenszyklus-Kostenansatzes gemäß Artikel 77 bewertet werden.

Die Kosten werden mittels des Kosten-Wirksamkeits-Ansatzes, wie des Lebenszyklus-Kostenansatzes gemäß ***der Bedingungen von*** Artikel 77 bewertet werden.

Or. de

Amendment 693

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 1

Text proposed by the Commission

L'offre économiquement la plus avantageuse du point de vue de l'entité adjudicatrice, comme visé au paragraphe 1, **point a)**, est déterminée sur la base de critères liés à l'objet du marché en question.

Amendment

L'offre économiquement la plus avantageuse du point de vue de l'entité adjudicatrice, comme visé au paragraphe 1 est déterminée sur la base de critères liés à l'objet du marché en question. ***Ces critères peuvent inclure, outre le prix ou les coûts, d'autres critères liés à l'objet du marché en question.***

Les coûts sont évalués selon une approche coût/efficacité telle que le calcul du coût du cycle de vie, dans les conditions établies à l'article 77.

Pour les produits et services hautement standardisés le prix sera le critère d'attribution prépondérant.

Les autres critères peuvent inclure notamment:

Or. fr

Amendment 694

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 695

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

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 1

Text proposed by the Commission

L'offre économiquement la plus avantageuse du point de vue *de l'entité adjudicatrice*, comme *visé* au paragraphe 1, *point a)*, est déterminée sur la base de critères liés à l'objet du marché en question.

Amendment

L'offre économiquement la plus avantageuse du point de vue *du pouvoir adjudicateur*, comme *visée* au paragraphe 1 est déterminée sur la base de critères liés à l'objet du marché *public* en question. *Ces critères incluent, outre le prix ou les coûts, d'autres critères liés à l'objet du marché public en question.*

Or. fr

Amendment 696

Evelyne Gebhardt

Proposal for a directive

Article 76 – paragraph 219 – subparagraph 1

Text proposed by the Commission

Die Vergabestelle ermittelt das aus ihrer Sicht im Sinne von Absatz 1 Buchstabe a wirtschaftlich günstigste Angebot anhand von Kriterien, die mit dem Gegenstand des betreffenden Auftrags in Verbindung stehen.

Amendment

Das wirtschaftlich günstigste Angebot gemäß Absatz 1 Buchstabe a erfolgt aus Sicht des öffentlichen Auftraggebers aufgrund von Kriterien, die mit dem Auftragsgegenstand des besagten öffentlichen Auftrags in Verbindung stehen.

Or. de

Amendment 697

Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Ces critères incluent, outre le prix ou les coûts, visés au paragraphe 1, premier alinéa, point b), d'autres critères liés à l'objet du marché en question, notamment:

Or. fr

Amendment 698

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

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:

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 699

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

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Ces critères incluent, outre le prix ou les coûts, visés au paragraphe 1, premier alinéa, point b), d'autres critères liés à l'objet du marché en question, notamment:

Les coûts sont évalués selon une approche coût/efficacité telle que le calcul du coût du cycle de vie, dans les conditions établies à l'article 77. Pour les produits et services hautement standardisés le prix sera le critère d'attribution prépondérant. Les autres critères peuvent inclure

notamment:

Or. fr

Amendment 700
Evelyne Gebhardt

Proposal for a directive
Article 76 – paragraph 219 – subparagraph 2 – introductory part

Text proposed by the Commission

Zu diesen Kriterien zählen – ***zusätzlich zu dem Preis oder den Kosten, auf die in Absatz 1 Buchstabe b verwiesen wird*** – weitere Kriterien, die mit dem ***Gegenstand*** des ***betreffenden*** Auftrags in Verbindung stehen, wie z. B.:

Amendment

Zu diesen Kriterien zählen weitere Kriterien, die mit dem ***Auftragsgegenstand*** des ***besagten öffentlichen*** Auftrags in Verbindung stehen, wie z. B.:

Or. de

Amendment 701
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 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, in addition to the price, other criteria linked to the subject-matter of the ***public*** contract in question, such as:

Or. en

Amendment 702
Heide Rühle

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental **characteristics** and innovative **character**;

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental, **social** and innovative **characteristics**;

Or. en

Amendment 703

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

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative **character**;

(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 704

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics,

(a) quality, including technical merit, aesthetic and functional characteristics,

accessibility, design for all users,
environmental characteristics and
innovative character;

accessibility, design for all users,
environmental, **social** characteristics and
innovative character;

Or. en

Amendment 705
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 706
Sergio Gaetano Cofferati

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point a a (new)

Text proposed by the Commission

Amendment

***(abis) condizioni di lavoro dignitose,
salute e sicurezza sul luogo di lavoro,
rispetto della contrattazione collettiva;***

***(Questo emendamento deve essere posto
prima del punto (a) del presente
Paragrafo.)***

Or. it

Amendment 707

Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen

Proposal for a directive

Article 76 – paragraph 219 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) bei Dienstleistungsaufträgen und Aufträgen für die Konzeption von Bauarbeiten können die Organisation, Qualifikation und Erfahrung des mit der Auftragsausführung betrauten Personals berücksichtigt werden mit der Folge, dass dieses Personal nach dem Zuschlag nur mit Zustimmung der Vergabestelle ersetzt werden kann, die prüfen muss, dass mit einem Wechsel eine gleichwertige Organisation und Qualität gegeben sind;

entfällt

Or. de

Justification

Die Regelung, nach der das Personal des Auftragnehmers nach dem Zuschlag nur mit Zustimmung des Auftraggebers ersetzt werden darf und dieser prüfen muss, dass mit einem Wechsel eine gleichwertige Organisation und Qualität gegeben sind, würde zu hohem bürokratischem Aufwand, ggf. arbeitsrechtlichen Schwierigkeiten insbesondere für KMU führen. Zudem würde diese Regelung der Trennung von Eignungs- und Zuschlagskriterien zuwiderlaufen.

Amendment 708

Heide Rühle

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

(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

staff may only be replaced with the consent of the contracting entity which must verify that replacements ensure equivalent organisation and quality;

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 709

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 organisation and quality***;

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***;

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 710
Jürgen Creutzmann

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 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 711
Andreas Schwab

Proposal for a directive
Article 76 – paragraph 219 – subparagraph 2 – point d

Text proposed by the Commission

(d) der spezielle Prozess zur Produktion bzw. Erbringung der erbetenen Bauleistungen, Lieferungen oder Dienstleistungen oder jedes sonstigen in Artikel 2 Absatz 22 genannten Lebenszyklusstadiums in dem Maße, wie diese Kriterien gemäß Absatz 4 spezifiziert sind und direkt in diese Prozesse einbezogene Faktoren betreffen und den speziellen Prozess der Produktion bzw. Erbringung der erbetenen Bauleistungen, Lieferungen oder Dienstleistungen charakterisieren.

Amendment

entfällt

Or. de

Justification

Die Einbeziehung vergabefremder Kriterien bei der Auftragsvergabe soll unter engem Bezug zum Auftragsgegenstand erfolgen. Dem widerspricht die Berücksichtigung von Produktionsprozessen bei der Ermittlung des wirtschaftlich günstigsten Angebots.

Amendment 712

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 713

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 **deleted**

of the requested works, supplies or services.

Or. en

Amendment 714

Heide Rühle

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

(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.***

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, specified in accordance with paragraph 4.

Or. en

Justification

Extremely complex wording - redundant

Amendment 715

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 76 – paragraph 219 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) soziale Kriterien wie die Beachtung menschenwürdiger Arbeitsbedingungen, Vorschriften über Gesundheit und Sicherheit, Tarifverhandlungen, Gleichstellung der Geschlechter (zum

Beispiel gleiche Entlohnung, Vereinbarkeit von Berufs- und Familienleben), soziale Integration, einschließlich von Beschäftigungsmöglichkeiten für Menschen mit Behinderung, benachteiligte oder schutzbedürftige Arbeitnehmer und Arbeitnehmerinnen (z. B. Langzeitarbeitslose, Roma, Migranten oder Jüngere und Ältere), Zugang zu Maßnahmen der Berufsausbildung am Arbeitsplatz, Einbeziehung und Konsultation der Nutzer, Erschwinglichkeit, menschenrechtlich und ethisch ausgerichteter Handel;

Or. de

Amendment 716
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(dbis) las características relacionadas con las condiciones de trabajo que tengan por objeto proteger la salud de los trabajadores o favorecer la integración social de las personas desfavorecidas o con discapacidad entre las personas encargadas de ejecutar el contrato.

Or. es

Amendment 717
Sergio Gaetano Cofferati

Proposal for a directive
Article 76 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(dbis) criteri sociali come, ad esempio,

equilibrio di genere, inclusione sociale, ivi comprese le opportunità di occupazione per i lavoratori disabili, svantaggiati o vulnerabili, accesso alla formazione professionale sul luogo di lavoro, consultazione e partecipazione degli utenti, accessibilità economica;

Or. it

Amendment 718
Evelyne Gebhardt

Proposal for a directive
Article 76 – paragraph 3

Text proposed by the Commission

Amendment

3. Die Mitgliedstaaten können vorschreiben, dass sich die Vergabe bestimmter Arten von Aufträgen auf das wirtschaftlich günstigste Angebot im Sinne von Absatz 1 Buchstabe a und Absatz 2 zu stützen hat.

entfällt

Or. de

Amendment 719
Frank Engel, Philippe Juvin, Andreas Schwab

Proposal for a directive
Article 76 – paragraph 3

Text proposed by the Commission

Amendment

3. Les États membres peuvent imposer que l'attribution de certains types de marchés se fasse sur la base de l'offre économiquement la plus avantageuse comme visée au paragraphe 1, point a), et au paragraphe 2.

supprimé

Or. fr

Amendment 720
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 76 – paragraph 4

Text proposed by the Commission

4. Die Zuschlagskriterien **übertragen der Vergabestelle keine uneingeschränkte Entscheidungsfreiheit**. Sie gewährleisten die Möglichkeit eines wirksamen Wettbewerbs und werden von Anforderungen **ergänzt**, die eine effiziente Überprüfung der von den Bietern **vorgelegten** Informationen gestatten. Auf der Grundlage der von den Bietern **vorgelegten** Informationen und **Nachweisen** prüfen die **Vergabestellen** wirksam, ob die Angebote den Zuschlagskriterien genügen.

Amendment

221. Die Zuschlagskriterien **sind mit dem Vertragsgegenstand verknüpft (dies schließt unsichtbare Merkmale von Produkten oder Dienstleistungen wie Lebenszyklusmerkmale nicht aus; sie** gewährleisten die Möglichkeit eines wirksamen **und fairen** Wettbewerbs und werden von Anforderungen **begleitet**, die eine effiziente Überprüfung der von den Bietern **übermittelten** Informationen gestatten. Auf der Grundlage der von den Bietern **beigebrachten** Informationen und **Nachweise** prüfen die **öffentlichen Auftraggeber** wirksam, ob die Angebote den Zuschlagskriterien genügen.

Or. de

Amendment 721
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 criteria.**

Amendment

4. Award criteria shall be accompanied by requirements which allow the information provided by the tenderers to be effectively verified.

*Justification**redundant***Amendment 722**
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 723
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 ***collection and recycling costs and***

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 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