

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Text with EEA relevance)

## TITLE I

### SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

#### CHAPTER I

##### *Subject-matter and definitions*

###### *Article 1*

###### **Subject matter and scope**

1 This Directive establishes rules on the procedures for procurement by contracting entities with respect to contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 15.

2 Procurement within the meaning of this Directive is the acquisition by means of a supply, works or service contract of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 8 to 14.

3 The application of this Directive is subject to Article 346 of TFEU.

4 This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.

5 This Directive does not affect the way in which the Member States organise their social security systems.

6 The scope of this Directive shall not include non-economic services of general interest.

###### *Article 2*

###### **Definitions**

For the purposes of this Directive, the following definitions apply:

- (1) ‘supply, works and service contracts’ means contracts for pecuniary interest concluded in writing between one or more contracting entities and one or more economic operators and having as their object the execution of works, the supply of products or the provision of services;

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.*

---

- (2) ‘works contracts’ means contracts having as their object one of the following:
  - (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I;
  - (b) the execution, or both the design and execution, of a work;
  - (c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;
- (3) ‘a work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- (4) ‘supply contracts’ means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations;
- (5) ‘service contracts’ means contracts having as their object the provision of services other than those referred to in point 2;
- (6) ‘economic operator’ means any natural or legal person, or a contracting entity, or a group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;
- (7) ‘tenderer’ means an economic operator that has submitted a tender;
- (8) ‘candidate’ means an economic operator that has sought an invitation or has been invited to take part in a restricted or negotiated procedure, in a competitive dialogue or in an innovation partnership;
- (9) ‘procurement document’ means any document produced or referred to by the contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
- (10) ‘centralised purchasing activities’ means activities conducted on a permanent basis, in one of the following forms:
  - (a) the acquisition of supplies and/or services intended for contracting entities,
  - (b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;
- (11) ‘ancillary purchasing activities’ means activities consisting in the provision of support to purchasing activities, in particular in the following forms:
  - (a) technical infrastructure enabling contracting entities to award public contracts or to conclude framework agreements for works, supplies or services;
  - (b) advice on the conduct or design of procurement procedures;

- (c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;
- (12) ‘central purchasing body’ means a contracting entity within the meaning of Article 4(1) of this Directive or a contracting authority within the meaning of point 1 of Article 2(1) of Directive 2014/24/EU providing centralised purchasing activities and, possibly, ancillary purchasing activities.
- Procurement carried out by a central purchasing body in order to perform centralised purchasing activities shall be deemed to be procurement for the pursuit of an activity as described in Articles 8 to 14. Article 18 shall not apply to procurement carried out by a central purchasing body in order to perform centralised purchasing activities;
- (13) ‘procurement service provider’ means a public or private body, which offers ancillary purchasing activities on the market;
- (14) ‘written’ or ‘in writing’ means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (15) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- (16) ‘life cycle’ means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;
- (17) ‘design contests’ means those procedures which enable the contracting entity to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;
- (18) ‘innovation’ means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, inter alia, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;
- (19) ‘label’ means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;
- (20) ‘label requirements’ means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.

### *Article 3*

#### **Contracting authorities**

1 For the purpose of this Directive ‘contracting authorities’ means State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.*

---

2 'Regional authorities' includes all authorities of the administrative units, listed non-exhaustively in NUTS 1 and 2, as referred to in Regulation (EC) No 1059/2003 of the European Parliament and of the Council<sup>(1)</sup>.

3 'Local authorities' includes all authorities of the administrative units falling under NUTS 3 and smaller administrative units, as referred to in Regulation (EC) No 1059/2003.

4 'Bodies governed by public law' means bodies that have all of the following characteristics:

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

#### *Article 4*

#### **Contracting entities**

1 For the purpose of this Directive contracting entities are entities, which:

- a are contracting authorities or public undertakings and which pursue one of the activities referred to in Articles 8 to 14;
- b when they are not contracting authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 8 to 14, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

2 'Public undertaking' means any undertaking over which the contracting authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it.

A dominant influence on the part of the contracting authorities shall be presumed in any of the following cases in which those authorities, directly or indirectly:

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

3 For the purposes of this Article, 'special or exclusive rights' means rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities defined in Articles 8 to 14 to one or more entities, and which substantially affects the ability of other entities to carry out such activity.

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of the first subparagraph.

Such procedures include:

- a procurement procedures with a prior call for competition in conformity with Directive 2014/24/EU, Directive 2009/81/EC, Directive 2014/23/EU or this Directive;
- b procedures pursuant to other legal acts of the Union listed in Annex II, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 103 concerning the modification of the list of Union legal acts set out in Annex II, when on the basis of the adoption of new legal acts, repeal or modification of such legal acts, such amendments prove necessary.

### *Article 5*

#### **Mixed procurement covering the same activity**

1 Paragraph 2 shall apply to mixed contracts which have as their subject-matter different types of procurement all of which are covered by this Directive.

Paragraphs 3 to 5 shall apply to mixed contracts which have as their subject-matter procurement covered by this Directive and procurement covered by other legal regimes.

2 Contracts which have as their subject-matter two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting partly of services within the meaning of Chapter I of Title III and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

3 Where the different parts of a given contract are objectively separable, paragraph 4 shall apply. Where the different parts of a given contract are objectively not separable, paragraph 5 shall apply.

Where part of a given contract is covered by Article 346 TFEU or Directive 2009/81/EC Article 25 of this Directive shall apply.

4 In the case of contracts which have as their subject-matter procurement covered by this Directive as well as procurement not covered by this Directive, contracting entities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting entities choose to award separate contracts for separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

Where contracting entities choose to award a single contract, this Directive shall, unless otherwise provided in Article 25, apply to the ensuing mixed contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

In the case of mixed contracts containing elements of supply, works and service contracts and of concessions, the mixed contract shall be awarded in accordance with this Directive, provided that the estimated value of the part of the contract which constitutes a contract covered by this Directive, calculated in accordance with Article 16, is equal to or greater than the relevant threshold set out in Article 15.

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.*

---

5 Where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

### *Article 6*

#### **Procurement covering several activities**

1 In the case of contracts intended to cover several activities, contracting entities may choose to award separate contracts for the purposes of each separate activity or to award a single contract. Where contracting entities choose to award separate contracts, the decision as to which rules apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

Notwithstanding Article 5, where contracting entities choose to award a single contract, paragraphs 2 and 3 of this Article shall apply. However, where one of the activities concerned is covered by Article 346 TFEU or Directive 2009/81/EC, Article 26 of this Directive shall apply.

The choice between awarding a single contract or awarding a number of separate contracts shall not, however, be made with the objective of excluding the contract or contracts from the scope of application either of this Directive or, where applicable, Directive 2014/24/EU or Directive 2014/23/EU.

2 A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

3 In the case of contracts for which it is objectively impossible to determine for which activity the contract is principally intended, the applicable rules shall be determined in accordance with points (a), (b), and (c):

- a the contract shall be awarded in accordance with Directive 2014/24/EU, if one of the activities for which the contract is intended is subject to this Directive and the other to Directive 2014/24/EU;
- b the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other to Directive 2014/23/EU;
- c the contract shall be awarded in accordance with this Directive, if one of the activities for which the contract is intended is subject to this Directive and the other is not subject to either this Directive, Directive 2014/24/EU or 2014/23/EU.

---

**Status:** EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

---

- (1) Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) ([OJ L 154, 21.6.2003, p. 1](#)).