SECTION 3

Procedures

Competitive dialogue

General and selection of participants

30.—(1) In competitive dialogues, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority.

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

(3) Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue.

(4) Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 65.

(5) The contract shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with regulation 67.

(6) Contracting authorities shall set out their needs and requirements in the contract notice and they shall define those needs and requirements in that notice or in a descriptive document, or in both.

(7) At the same time and in the same documents, contracting authorities shall also set out and define the chosen award criteria and set out an indicative timeframe.

Conduct of the dialogue

(8) Contracting authorities—

(a) shall open, with the participants selected in accordance with the relevant provisions of regulations 56 to 66, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs, and

(b) may discuss all aspects of the procurement with the chosen participants during this dialogue.
During the dialogue, contracting authorities shall ensure equality of treatment among all participants and, to that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

In accordance with regulation 21, contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue 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.

Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document.

In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use the option described in paragraph (12).

The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

Final tenders

Having declared that the dialogue is concluded and having so informed the remaining participants, contracting authorities shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.

Those tenders shall contain all the elements required and necessary for the performance of the project.

Those tenders may be clarified, specified and optimised at the request of the contracting authority.

But such clarifications, specification or optimisation, or any additional information, may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

At the request of the contracting authority, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with regulation 67 may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, provided this—

(a) does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and

(b) does not risk distorting competition or causing discrimination.

Prizes and payments

Contracting authorities may specify prizes or payments to the participants in the dialogue.