

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (repealed)

TITLE II

RULES ON PUBLIC CONTRACTS

CHAPTER VI

Rules on advertising and transparency

Section 1

Publication of notices

Article 35

Notices

1 Contracting authorities shall make known, by means of a prior information notice published by the Commission or by themselves on their ‘buyer profile’, as described in point 2(b) of Annex VIII:

- a where supplies are concerned, the estimated total value of the contracts or the framework agreements by product area which they intend to award over the following 12 months, where the total estimated value, taking into account Articles 7 and 9, is equal to or greater than EUR 750 000.

The product area shall be established by the contracting authorities by reference to the CPV nomenclature;

- b where services are concerned, the estimated total value of the contracts or the framework agreements in each of the categories of services listed in Annex II A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Articles 7 and 9, is equal to or greater than EUR 750 000;
- c where works are concerned, the essential characteristics of the contracts or the framework agreements which they intend to award, the estimated value of which is equal to or greater than the threshold specified in Article 7, taking into account Article 9.

The notices referred to in subparagraphs (a) and (b) shall be sent to the Commission or published on the buyer profile as soon as possible after the beginning of the budgetary year.

The notice referred to in subparagraph (c) shall be sent to the Commission or published on the buyer profile as soon as possible after the decision approving the planning of the works contracts or the framework agreements that the contracting authorities intend to award.

Contracting authorities who publish a prior information notice on their buyer profiles shall send the Commission, electronically, a notice of the publication of the prior

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information notice on a buyer profile, in accordance with the format and detailed procedures for sending notices indicated in point 3 of Annex VIII.

Publication of the notices referred to in subparagraphs (a), (b) and (c) shall be compulsory only where the contracting authorities take the option of shortening the time limits for the receipt of tenders as laid down in Article 38(4).

This paragraph shall not apply to negotiated procedures without the prior publication of a contract notice.

2 Contracting authorities which wish to award a public contract or a framework agreement by open, restricted or, under the conditions laid down in Article 30, negotiated procedure with the publication of a contract notice or, under the conditions laid down in Article 29, a competitive dialogue, shall make known their intention by means of a contract notice.

3 Contracting authorities which wish to set up a dynamic purchasing system shall make known their intention by means of a contract notice.

Contracting authorities which wish to award a contract based on a dynamic purchasing system shall make known their intention by means of a simplified contract notice.

4 Contracting authorities which have awarded a public contract or concluded a framework agreement shall send a notice of the results of the award procedure no later than 48 days after the award of the contract or the conclusion of the framework agreement.

In the case of framework agreements concluded in accordance with Article 32 the contracting authorities are not bound to send a notice of the results of the award procedure for each contract based on that agreement.

Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.

In the case of public contracts for services listed in Annex II 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 77(2).

Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where release of such information would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

Article 36

Form and manner of publication of notices

1 Notices shall include the information mentioned in Annex VII A and, where appropriate, any other information deemed useful by the contracting authority in the format of standard forms adopted by the Commission in accordance with the procedure referred to in Article 77(2).

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2 Notices sent by contracting authorities to the Commission shall be sent either by electronic means in accordance with the format and procedures for transmission indicated in Annex VIII, paragraph 3, or by other means. In the event of recourse to the accelerated procedure set out in Article 38(8), notices must be sent either by telefax or by electronic means, in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII.

Notices shall be published in accordance with the technical characteristics for publication set out in point 1(a) and (b) of Annex VIII.

3 Notices drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, shall be published no later than five days after they are sent.

Notices which are not transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, shall be published not later than 12 days after they are sent, or in the case of accelerated procedure referred to in Article 38(8), not later than five days after they are sent.

4 Contract notices shall be published in full in an official language of the Community as chosen by the contracting authority, this original language version constituting the sole authentic text. A summary of the important elements of each notice shall be published in the other official languages.

The costs of publication of such notices by the Commission shall be borne by the Community.

5 Notices and their contents may not be published at national level before the date on which they are sent to the Commission.

Notices published at national level shall not contain information other than that contained in the notices dispatched to the Commission or published on a buyer profile in accordance with the first subparagraph of Article 35(1), but shall mention the date of dispatch of the notice to the Commission or its publication on the buyer profile.

Prior information notices may not be published on a buyer profile before the dispatch to the Commission of the notice of their publication in that form; they shall mention the date of that dispatch.

6 The content of notices not sent by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, shall be limited to approximately 650 words.

7 Contracting authorities must be able to supply proof of the dates on which notices are dispatched.

8 The Commission shall give the contracting authority confirmation of the publication of the information sent, mentioning the date of that publication. Such confirmation shall constitute proof of publication.

Article 37

Non-mandatory publication

Contracting authorities may publish in accordance with Article 36 notices of public contracts which are not subject to the publication requirement laid down in this Directive.