

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance)

TITLE I

SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

CHAPTER I

Scope and definitions

Section 1

Subject-matter and definitions

Article 1

Subject-matter and scope

1 This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.

2 Procurement within the meaning of this Directive is the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.

3 The application of this Directive is subject to Article 346 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 Agreements, decisions or other legal instruments that organise the transfer of powers and responsibilities for the performance of public tasks between contracting authorities or groupings of contracting authorities and do not provide for remuneration to be given for contractual performance, are considered to be a matter of internal organisation of the Member State concerned and, as such, are not affected in any way by this Directive.

Article 2

Definitions

- 1 For the purposes of this Directive, the following definitions apply:
- (1) ‘contracting authorities’ means the 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;
 - (2) ‘central government authorities’ means the contracting authorities listed in Annex I and, in so far as corrections or amendments have been made at national level, their successor entities;
 - (3) ‘sub-central contracting authorities’ means all contracting authorities which are not central government authorities;
 - (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 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;
 - (5) ‘public contracts’ means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services;
 - (6) ‘public works contracts’ means public 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 II;
 - (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 authority exercising a decisive influence on the type or design of the work;
 - (7) ‘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;
 - (8) ‘public supply contracts’ means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations;

- (9) 'public service contracts' means public contracts having as their object the provision of services other than those referred to in point 6;
- (10) 'economic operator' means any natural or legal person or public entity or 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;
- (11) 'tenderer' means an economic operator that has submitted a tender;
- (12) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;
- (13) 'procurement document' means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is 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;
- (14) '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 authorities,
 - (b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;
- (15) '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 authorities to award public contracts or to conclude framework agreements for works, supplies or services;
 - (b) advice on the conduct or design of public procurement procedures;
 - (c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;
- (16) 'central purchasing body' means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities;
- (17) 'procurement service provider' means a public or private body which offers ancillary purchasing activities on the market;
- (18) '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;
- (19) '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;

- (20) ‘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;
- (21) ‘design contests’ means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture and 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;
- (22) ‘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;
- (23) ‘label’ means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;
- (24) ‘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.

2 For the purpose of this Article ‘regional authorities’ includes authorities 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⁽¹⁾, while ‘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.

Article 3

Mixed procurement

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 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 6 shall apply.

Where part of a given contract is covered by Article 346 TFEU or Directive 2009/81/EC, Article 16 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 authorities may choose to award separate contracts for the separate parts or to award a single contract. Where contracting authorities 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 authorities choose to award a single contract, this Directive shall, unless otherwise provided in Article 16, 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 5, is equal to or greater than the relevant threshold set out in Article 4.

5 In the case of contracts which have as their subject both procurement covered by this Directive and procurement for the pursuit of an activity which is subject to Directive 2014/25/EU, the applicable rules shall, notwithstanding paragraph 4 of this Article, be determined pursuant to Articles 5 and 6 of Directive 2014/25/EU.

6 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.

- (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](#)).