

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 II

### **RULES APPLICABLE TO CONTRACTS**

#### *CHAPTER II*

#### *Techniques and instruments for electronic and aggregated procurement*

##### *Article 51*

#### **Framework agreements**

1 Contracting entities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

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.

The term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

2 Contracts based on a framework agreement shall be awarded on the basis of objective rules and criteria, which may include reopening the competition among those economic operators party to the framework agreement as concluded. These rules and criteria shall be set out in the procurement documents for the framework agreement.

The objective rules and criteria referred to in the first subparagraph shall ensure equal treatment of the economic operators who are parties to the agreement. Where a reopening the competition is included, contracting entities shall set a time limit which is sufficiently long to allow tenders for each specific contract to be submitted and 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.

Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

##### *Article 52*

#### **Dynamic purchasing systems**

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

and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

2 In order to procure under a dynamic purchasing system, contracting entities shall follow the rules of the restricted procedure. All the candidates who satisfy the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with Article 78(2). Where contracting entities have divided the system into categories of products, works or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.

Notwithstanding Article 46, the following time limits shall apply:

- a the minimum time limit for 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 shall in any event not be less than 15 days. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.
- b The minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. The second and third subparagraphs of Article 46(2) shall apply.

3 All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with Article 40(1), (3), (5) and (6).

4 For the purposes of awarding contracts under a dynamic purchasing system, contracting entities shall:

- a publish a call for competition making it clear that a dynamic purchasing system is involved;
- b indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;
- c indicate any division into categories of products, works or services and the characteristics defining them;
- d offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in accordance with Article 73.

5 Contracting entities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting entities shall finalise their assessment of such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting entities may extend the evaluation period provided that no invitation to

tender is issued during the extended evaluation period. Contracting entities shall indicate in the procurement documents the length of the extended period that they intend to apply.

Contracting entities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

6 Contracting entities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 74. Where the dynamic purchasing system has been divided into categories of works, products or services, contracting entities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system, 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. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

7 Contracting entities who, pursuant to Article 80, apply exclusion grounds and selection criteria provided for under Directive 2014/24/EU, may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in Article 59(1) of that Directive, within five working days from the date on which that request is transmitted.

Paragraphs 2 to 4 of Article 59 shall apply throughout the entire period of validity of the dynamic purchasing system.

8 Contracting entities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in period of validity, using the following standard forms:

- a where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;
- b where the system is terminated, a contract award notice referred to in Article 70.

9 No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

### *Article 53*

#### **Electronic auctions**

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

For this purpose, contracting entities shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

Certain service contracts and certain works contracts having as their subject-matter intellectual performances, such as the design of works, which cannot be ranked using automatic evaluation methods, shall not be the object of electronic auctions.

2 In open or restricted procedures or negotiated procedures with a prior call for competition, the contracting entities may decide that the award of a contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 51(2) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 52.

3 The electronic auction shall be based on one of the following elements of the tenders:

- a solely on prices where the contract is awarded on the basis of price only,
- b on prices and/or on the new values of the features of the tenders indicated in the procurement documents, where the contract is awarded on the basis of the best price-quality ratio or to the tender with the lowest cost using a cost-effectiveness approach.

4 Contracting entities which decide to hold an electronic auction shall state that fact in the contract notice, 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. The procurement documents shall include at least the information set out in Annex VII.

5 Before proceeding with the electronic auction, contracting entities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

A tender shall be considered admissible where it has been submitted by a tenderer, who has not been excluded pursuant to Article 78(1) or 80(1) and who meets the selection criteria laid down pursuant to Articles 78 and 80, and whose tender is in conformity with the technical specifications without being irregular or unacceptable or unsuitable.

In particular, tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low, shall be considered as being irregular. In particular tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure shall be considered as unacceptable.

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting entity's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to Articles 78(1) or 80(1), or does not meet the selection criteria laid down by the contracting entity pursuant to Articles 78 or 80.

All tenderers that have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using, as of the specified date and time, the connections in accordance with the instructions set out in the invitation. The electronic auction may take place in a number of successive phases. The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

6 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 82(5).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. Except where the most economically advantageous offer is identified on the basis of price alone, that formula shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

7 Throughout each phase of an electronic auction the contracting entities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

8 Contracting entities shall close an electronic auction in one or more of the following manners:

- a at the previously indicated date and time;
- b when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or
- c when the previously indicated number of phases in the auction has been completed.

Where the contracting entities intend to close an electronic auction in accordance with point (c) of the first subparagraph, possibly in combination with the arrangements laid down in point (b) thereof, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

9 After closing an electronic auction the contracting entities shall award the contract in accordance with Article 82 on the basis of the results of the electronic auction.

#### *Article 54*

### **Electronic catalogues**

1 Where use of electronic means of communication is required, contracting entities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

Member States may render the use of electronic catalogues mandatory in connection with certain types of procurement.

Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2 Electronic catalogues shall be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting entity.

Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting entity in accordance with Article 40.

3 Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting entities shall:

- a state so 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;
- b indicate in the procurement documents all the necessary information pursuant to Article 40(6) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

4 Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting entities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such a case, contracting entities shall use one of the following methods:

- a invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question; or
- b notify tenderers that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question, provided that the use of that method has been announced in the procurement documents for the framework agreement.

5 Where contracting entities reopen competition for specific contracts in accordance with point (b) of paragraph 4, they shall notify the tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give tenderers the possibility to refuse such collection of information.

Contracting entities shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the contract, contracting entities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

6 Contracting entities may award contracts based on a dynamic purchasing system by requiring that offers for specific contract are to be presented in the format of an electronic catalogue.

Contracting entities may also award contracts based on a dynamic purchasing system in accordance with point (b) of paragraph 4 and paragraph 5 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting entity. That catalogue shall be completed subsequently by the candidates, when they are informed of the contracting entity's intention to constitute tenders by means of the procedure set out in point (b) of paragraph 4.

## Article 55

### **Centralised purchasing activities and central purchasing bodies**

1 Member States may provide that contracting entities may acquire works, supplies and/or services from a central purchasing body offering the centralised purchasing activity referred to in point (a) of point (10) of Article 2.

Member States may also provide that contracting entities may acquire works, supplies and services by using contracts awarded by a central purchasing body, by using dynamic purchasing systems operated by a central purchasing body or by using a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in point (b) of point (10) of Article 2. Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting entities, this shall be mentioned in the call for competition setting up that dynamic purchasing system.

In relation to the first and second subparagraphs, Member States may provide that certain procurements are to be made by having recourse to central purchasing bodies or to one or more specific central purchasing bodies.

2 A contracting entity fulfils its obligations pursuant to this Directive when it acquires supplies or services from a central purchasing body offering the centralised purchasing activity referred to in point (a) of point (10) of Article 2.

Furthermore, a contracting entity also fulfils its obligations pursuant to this Directive where it acquires works, supplies or services by using contracts awarded by the central purchasing body, by using dynamic purchasing systems operated by the central purchasing body or by using a framework agreement concluded by the central purchasing body offering the centralised purchasing activity referred to in point (b) of point (10) of Article 2.

However, the contracting entity concerned shall be responsible for fulfilling the obligations pursuant to this Directive in respect of the parts it conducts itself, such as:

- a awarding a contract under a dynamic purchasing system, which is operated by a central purchasing body; or
- b conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body.

3 All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements set out in Article 40.

4 Contracting entities may, without applying the procedures provided for in this Directive, award a service contract for the provision of centralised purchasing activities to a central purchasing body.

Such service contracts may also include the provision of ancillary purchasing activities.

## Article 56

### **Occasional joint procurement**

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

2 Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting entities concerned, they shall be jointly responsible for fulfilling their obligations pursuant to this Directive. This applies also in cases where one contracting entity alone manages the procurement procedure, acting on its own behalf and on the behalf of the other contracting entities concerned.

Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting entities concerned, they shall be jointly responsible only for those parts carried out jointly. Each contracting entity shall have sole responsibility for fulfilling its obligations pursuant to this Directive in respect of the parts it conducts in its own name and on its own behalf.

## Article 57

### **Procurement involving contracting entities from different Member States**

1 Without prejudice to Articles 28 to 31, contracting entities from different Member States may act jointly in the award of contracts by using one of the means provided for in this Article.

Contracting entities shall not use the means provided in this Article for the purpose of avoiding the application of mandatory public law provisions in conformity with Union law to which they are subject in their Member State.

2 A Member State shall not prohibit its contracting entities from using centralised purchasing activities offered by central purchasing bodies located in another Member State.

In respect of centralised purchasing activities offered by a central purchasing body located in another Member State than the contracting entity, Member States may, however, choose to specify that their contracting entities may only use the centralised purchasing activities as defined in either point (a) or in point (b) of point (10) of Article 2.

3 The provision of centralised purchasing activities by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

The national provisions of the Member State where the central purchasing body is located shall also apply to the following:

- a the award of a contract under a dynamic purchasing system;
- b the conduct of a reopening of competition under a framework agreement.

4 Several contracting entities from different Member States may jointly award a contract, conclude a framework agreement or operate a dynamic purchasing system. They may also award contracts based on the framework agreement or on the dynamic purchasing system. Unless the necessary elements have been regulated by an international agreement concluded



between the Member States concerned, the participating contracting entities shall conclude an agreement that determines:

- a the responsibilities of the parties and the relevant applicable national provisions;
- b the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

A participating contracting entity fulfils its obligations pursuant to this Directive when it purchases works, supplies or services from a contracting entity which is responsible for the procurement procedure. When determining responsibilities and the applicable national law as referred to in point (a), the participating contracting entities may allocate specific responsibilities among them and determine the applicable provisions of the national laws of any of their respective Member States. The allocation of responsibilities and the applicable national law shall be referred to in the procurement documents for jointly awarded contracts.

5 Where several contracting entities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council<sup>(1)</sup> or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of the joint 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 entity has its registered office;
- b the national provisions of the Member State where the joint entity is carrying out its activities.

The agreement referred to in the first subparagraph may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

- (1) Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) ([OJ L 210, 31.7.2006, p. 19](#)).