

Commission Delegated Regulation (EU) No 1268/2012 of 29 October
2012 on the rules of application of Regulation (EU, Euratom)
No 966/2012 of the European Parliament and of the Council on the
financial rules applicable to the general budget of the Union (repealed)

PART ONE

COMMON PROVISIONS

[^{F1}TITLE V

PUBLIC PROCUREMENT AND CONCESSIONS]

CHAPTER 1

General provisions

[^{F1}Section 3

Procurement procedures

Article 128

**Minimum number of candidates and arrangements for
negotiation(Article 104(4) of the Financial Regulation)**

- 1 In a restricted procedure and in the procedures referred to in points (a) and (b) of Article 136(1) and in Article 136a, the minimum number of candidates shall be five.
- 2 In the competitive procedure with negotiation, the competitive dialogue, the innovation partnership, the prospection of the local market under Article 134(1)(g) and the negotiated procedure for low value contracts under Article 137(1) the minimum number of candidates shall be three.
- 3 Paragraphs 1 and 2 of this Article shall not apply in the following cases:
 - a negotiated procedures for very low value contracts under Article 137(2);
 - b negotiated procedures without prior publication under Article 134 except for design contests under Article 134(1)(d) and prospection of the local market under Article 134(1)(g).
- 4 Where the number of candidates meeting the selection criteria is below the minimum number specified in paragraphs 1 and 2, the contracting authority may continue the procedure by inviting the candidates with the required capacities. The contracting authority may not include other economic operators that did not initially request to participate or that it did not initially invite.
- 5 During a negotiation, the contracting authority shall ensure equal treatment for all tenderers.

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

A negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the procurement documents. The contracting authority shall indicate whether it will use that option in the procurement documents.

6 For the procedures laid down in points (d) and (g) of Article 134(1) and Articles 136a and 137, the contracting authority shall invite at least all economic operators who have expressed interest following *ex ante* publicity as set out in Article 124(1) or prospection of the local market or a design contest.

Article 129

Innovation partnership(Article 104(1) of the Financial Regulation)

1 The innovation partnership shall aim at the development of an innovative product, service or innovative works and the subsequent purchase of the resulting works, supplies or services, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the partners.

The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the completion of the works, the manufacturing of the products or the provision of the services. The innovation partnership shall set intermediate targets to be attained by the partners.

Based on those intermediate targets, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

2 Before launching an innovation partnership, the contracting authority shall consult the market as provided for in Article 137a in order to ascertain that the work, supply or service does not exist on the market or as near-to-market development activity.

The arrangements on negotiation set out in Article 104(4) of the Financial Regulation and in Article 128(5) of this Regulation shall be followed.

In the procurement documents, the contracting authority shall identify the need for innovative works, supplies or services that cannot be met by purchasing works, supplies or services already available on the market. It shall indicate which elements of this description define the minimum requirements. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

The contracts shall be awarded on the sole basis of the best price-quality ratio as set out in Article 110(4) of the Financial Regulation.

3 In the procurement documents, the contracting authority shall specify the arrangements applicable to intellectual property rights.

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In the framework of the innovation partnership, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without its agreement.

The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of works, supplies or services shall not be disproportionate in relation to the investment required for their development.

Article 130

Design contests(Article 104(1) of the Financial Regulation)

1 Design contests shall be subject to the rules on advertising set out in Article 123 and may include the award of prizes.

Where design contests are restricted to a limited number of candidates, the contracting authority shall lay down clear and non-discriminatory selection criteria.

The number of candidates invited to participate must be sufficient to ensure genuine competition.

2 The jury shall be appointed by the authorising officer responsible. It shall be composed exclusively of natural persons who are independent of candidates in the contest. Where a particular professional qualification is required from candidates in a contest, at least one third of the members of the jury must have the same or an equivalent qualification.

The jury shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

3 The proposals of the jury, based on the merits of each project, and its ranking and remarks, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the jury has given its opinion.

Candidates may be asked by the jury to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.

4 The contracting authority shall then take an award decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the jury's opinion.

Article 131

Dynamic purchasing system(Article 104(6) of the Financial Regulation)

1 The dynamic purchasing system is a completely electronic process for making commonly used purchases, which is open throughout its duration to any economic operator who satisfies the selection criteria. It may be divided into categories of works, supplies or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. In this case, selection criteria must be defined for each category.

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2 The contracting authority shall indicate in the procurement documents the nature and estimated quantity of the purchases envisaged and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

3 The contracting authority shall give any economic operator, throughout the period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system. It shall complete its evaluation of such requests within 10 working days of receipt of that request. This deadline may be prolonged to 15 working days where justified. However, the contracting authority may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform the candidate at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

4 The contracting authority shall invite all candidates admitted to the system under the relevant category to submit a tender within a reasonable time. The contracting authority shall award the contract to the tenderer who has submitted the most economically advantageous tender on the basis of the award criteria set out in the contract notice. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

5 The contracting authority shall indicate the period of validity of the dynamic purchasing system in the contract notice.

A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

The contracting authority may not resort to this system to prevent, restrict or distort competition.

Article 132

Competitive dialogue(Article 104(1) of the Financial Regulation)

1 The contracting authority shall specify its needs and requirements, the award criteria and an indicative timeframe in the contract notice or in a descriptive document.

It shall award the contract to the tender offering the best price-quality ratio.

2 The contracting authority shall open a dialogue with the candidates satisfying the selection criteria in order to identify and define the means best suited to satisfying its needs. It may discuss all aspects of the procurement with the selected candidates during this dialogue but it cannot alter its needs and requirements and award criteria as provided for in paragraph 1.

During the course of dialogue, the contracting authority shall ensure equality of treatment among all tenderers and shall not reveal the solutions proposed or other confidential information communicated by a tenderer without its agreement to waive that confidentiality.

The competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed by applying the announced award criteria if provision is made for this possibility in the contract notice or the descriptive document.

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

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After informing the remaining tenderers that the dialogue is concluded, the contracting authority shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

At the request of the contracting authority, these final tenders may be clarified, specified and optimised provided this does not involve substantial changes to the tender or to the procurement documents.

The contracting authority may negotiate with the tenderer having submitted the tender offering the best price-quality ratio to confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender and does not risk distorting competition or causing discrimination.

4 The contracting authority may specify payments to the selected candidates taking part in the dialogue.

Article 133

Interinstitutional procedures(Article 104a(1) of the Financial Regulation)

In the case of an interinstitutional procedure, one contracting authority shall manage the procedure and the subsequent direct or framework contract acting on its own behalf and on behalf of the other contracting authorities concerned.

The contract notice shall indicate the contracting authorities referred to in Article 104a(1) of the Financial Regulation which are involved in the procurement procedure, the institution responsible for the procedure and the global volume of the contracts for all those contracting authorities.

Article 134

Use of a negotiated procedure without prior publication of a contract notice(Article 104(5) of the Financial Regulation)

1 When the contracting authority uses the negotiated procedure without prior publication of a contract notice, it shall follow the arrangements on negotiation set out in Article 104(4) of the Financial Regulation and in Article 128(5) of this Regulation.

The contracting authority may use the negotiated procedure regardless of the estimated value of the contract, in the following cases:

- a where no tenders, or no suitable tender, or no request to participate or no suitable request to participate as provided for in paragraph 2 have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered;
- b where the works, supplies or services can only be provided by a single economic operator under the conditions set out in paragraph 3 and for any of the following reasons:
 - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - (ii) competition is absent for technical reasons;

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- (iii) the protection of exclusive rights including intellectual property rights must be ensured;
- c in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the time limits laid down in Articles 152, 154 and 275 and where the justification of such extreme urgency is not attributable to the contracting authority;
- d where a service contract follows a design contest and is to be awarded to the winner or to one of the winners; in the latter case, all winners must be invited to participate in the negotiations;
- e for new services or works consisting in the repetition of similar services or works entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that these services or works are in conformity with a basic project for which the original contract was awarded after publication of a contract notice, subject to the conditions set out in paragraph 4;
- f for supply contracts:
 - (i) for additional deliveries which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; when the institutions award contracts on their own account, the duration of such contracts may not exceed three years;
 - (ii) where the products are manufactured purely for the purpose of research, experimentation, study or development; however such contracts shall not include quantity production to establish commercial viability or to recover research and development costs;
 - (iii) for supplies quoted and purchased on a commodity market;
 - (iv) for purchases of supplies on particularly advantageous terms, from either an economic operator which is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law;
- g for building contracts, after prospecting the local market;
- h for contracts for any of the following:
 - (i) legal representation by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC⁽¹⁾ in arbitration or conciliation or judicial proceedings;
 - (ii) legal advice given in the preparation of the proceedings referred to above or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;
 - (iii) for arbitration and conciliation services;
 - (iv) document certification and authentication services which must be provided by notaries;
- i for contracts declared to be secret or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so

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- requires, provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure;
- j for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council⁽²⁾, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
 - k loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
 - l for the purchase of public communication networks and electronic communications services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council⁽³⁾;
 - m services provided by an international organisation where it cannot participate in competitive procedures according to its statute or act of establishment.
- 2 A tender shall be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate shall be considered unsuitable where the economic operator is in an exclusion situation under Article 106(1) of the Financial Regulation or does not meet the selection criteria.
- 3 The exceptions set out in points (ii) and (iii) of point (b) of paragraph 1 shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.
- 4 In the cases referred to in point (e) of paragraph 1, the basic project shall indicate the extent of possible new services or works and the conditions under which they will be awarded. As soon as the basic project is put up for tender, the possible use of the negotiated procedure shall be disclosed, and the total estimated amount for the subsequent services or works shall be taken into consideration in applying the thresholds referred to in Article 118(1) of the Financial Regulation or in Articles 265(1)(a), 267(1)(a) or 269(1)(a) of this Regulation in the field of external actions. When the institutions award contracts on their own account, that procedure may only be used during the performance of the original contract and at the latest during the three years following its signature.

Article 135

Use of a competitive procedure with negotiation or competitive dialogue(Article 104(5) of the Financial Regulation)

- 1 When the contracting authority uses the competitive procedure with negotiation or the competitive dialogue, it shall follow the arrangements on negotiation set out in Article 104(4) of the Financial Regulation and in Article 128(5) of this Regulation. The contracting authority may use these procedures regardless of the estimated value of the contract, in the following cases:
- a where only irregular or unacceptable tenders as defined in paragraphs 2 and 3 have been submitted in response to an open or restricted procedure after this procedure has been completed provided that the original procurement documents are not substantially altered; the publication of a contract notice may be waived under the conditions set out in paragraph 4;
 - b with regard to works, supplies or services fulfilling one or more of the following criteria:

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- (i) where the needs of the contracting authority cannot be met without the adaptation of a readily available solution;
 - (ii) the works, supplies or services include design or innovative solutions;
 - (iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, complexity or the legal and financial make-up of the contract or the risks attached to the subject matter of the contract;
 - (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, as set out in Article 139(3);
 - c for concession contracts;
 - d for the service contracts referred to in Annex XIV to Directive 2014/24/EU;
 - e for research and development services other than those covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 unless the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, or unless the service provided is wholly remunerated by the contracting authority;
 - f for service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual or radio media services as defined in Directive 2010/13/EU of the European Parliament and of the Council⁽⁴⁾ or contracts for broadcasting time or programme provision.
- 2 A tender shall be considered irregular in any of the following cases:
- a when it does not comply with the minimum requirements specified in the procurement documents;
 - b when it does not comply with the requirements for submission set out in Article 111(4) of the Financial Regulation;
 - c when the tenderer is rejected under points (b) or (c) of Article 107(1) of the Financial Regulation;
 - d when the contracting authority has declared the tender to be abnormally low.
- 3 A tender shall be considered unacceptable in any of the following cases:
- a when the price of the tender exceeds the contracting authority's maximum budget as determined and documented prior to the launching of the procurement procedure;
 - b when the tender fails to meet the minimum quality levels for award criteria.
- 4 In the cases referred to in point (a) of paragraph 1, the contracting authority shall not be required to publish a contract notice if it includes in the competitive procedure with negotiation all those tenderers who satisfied exclusion and selection criteria except those who submitted a tender declared to be abnormally low.

Article 136

Procedure involving a call for expressions of interest(Article 104(5) of the Financial Regulation)

- 1 For contracts with a value below the thresholds referred to in Article 118(1) of the Financial Regulation or in Article 265(1)(b) of this Regulation and without prejudice to

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Articles 134 and 135 of this Regulation, the contracting authority may use a call for expressions of interest to do either of the following:

- a to pre-select candidates to be invited to submit tenders in response to future restricted invitations to tender;
- b to collect a list of vendors to be invited to submit requests to participate or tenders.

2 The list drawn up following a call for expressions of interest shall be valid for not more than four years from the date on which the notice referred to in Article 124(1) is published.

The list referred to in the first subparagraph may include sub-lists.

Any interested economic operator may express interest at any time during the period of validity of the list, with the exception of the last three months of that period.

3 Where a contract is to be awarded, the contracting authority shall invite all candidates or vendors entered on the relevant list or sub-list to do either of the following:

- a to submit a tender in the case referred to in point (a) of paragraph 1;
- b to submit, in case of the list referred to in point (b) of paragraph 1, either of the following:
 - (i) tenders including documents relating to exclusion and selection criteria;
 - (ii) documents relating to exclusion and selection criteria and, in a second step, tenders, for those fulfilling these criteria.

Article 136a

Middle-value contracts(Article 104(1) of the Financial Regulation)

A middle value contract of a value below the thresholds referred to in Article 118(1) of the Financial Regulation may be awarded by negotiated procedure following the arrangements on negotiation set out in Article 104(4) of the Financial Regulation and in Article 128(5) of this Regulation. Article 124(1) and paragraphs 1 and 4 of Article 128 of this Regulation shall apply to such procedures. Only candidates invited simultaneously and in writing by the contracting authority may submit an initial tender.

Article 137

Low-value contracts(Article 104(1) of the Financial Regulation)

1 A low value contract of a value not exceeding EUR 60 000 may be awarded by negotiated procedure following the arrangements on negotiation set out in Article 104(4) of the Financial Regulation and in Article 128(5) of this Regulation. Articles 124(1) and paragraphs 2 and 4 of Article 128 of this Regulation shall apply to such procedures. Only candidates invited simultaneously and in writing by the contracting authority may submit an initial tender.

2 A very low value contract of a value not exceeding EUR 15 000 may be awarded by negotiated procedure following the arrangements on negotiation set out in Article 104(4) of the Financial Regulation and in Article 128(5) of this Regulation. Article 128(3) of this Regulation shall apply to such procedures. Only candidates invited simultaneously and in writing by the contracting authority may submit an initial tender.

3 Payments of amounts not exceeding EUR 1 000 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

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Article 137a

Preliminary market consultation(Article 105(1) of the Financial Regulation)

1 For preliminary market consultation, the contracting authority may seek or accept advice from independent experts or authorities or from economic operators. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

2 Where an economic operator has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures as set out in Article 142 to ensure that competition is not distorted by the participation of that economic operator.

Article 138

Procurement documents(Article 105(2) of the Financial Regulation)

- 1 The procurement documents shall include the following:
- a if applicable, the contract notice or other advertising measure as provided for in Articles 123 to 126;
 - b the invitation to tender;
 - c the tender specifications or the descriptive documents in the case of a competitive dialogue; they shall include the technical specifications and the relevant criteria;
 - d the draft contract based on the model contract.

Point (d) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

- 2 The invitation to tender shall contain the following:
- a specify the rules governing the submission of tenders, including in particular the conditions to maintain them confidential until opening, the closing date and time for receipt and the address to which they must be sent or delivered or the internet address in case of electronic submission;
 - b state that submission of a tender implies acceptance of the terms and conditions set out in the procurement documents and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
 - c specify the period during which a tender will remain valid and may not be modified in any respect;
 - d forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 160, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;
 - e specify the means of proof for compliance with the time-limit for receipt of tenders;
 - f state that submission of a tender implies acceptance of receiving notification of the outcome of the procedure by electronic means.

- 3 The tender specifications shall contain the following:
- a the exclusion and selection criteria;

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- b the award criteria and their relative weighting or, where weighting is not possible for objective reasons, their decreasing order of importance, which shall also apply to variants if they are authorised in the contract notice;
 - c the technical specifications referred to in Article 139;
 - d if variants are authorised, the minimum requirements which they must meet;
 - e information whether the Protocol on the Privileges and Immunities of the European Union or, where appropriate, the Vienna Convention on Diplomatic Relations or Vienna Convention on Consular Relations applies;
 - f the evidence of access to procurement, as set out in Articles 172 and 263;
 - g in the case of a dynamic purchasing system or electronic catalogues, the electronic equipment used and the technical connection arrangements and specifications needed.
- 4 The draft contract shall contain the following:
- a specify the liquidated damages for failure to comply with its clauses;
 - b specify the details which must be contained in invoices and in the relevant supporting documents in accordance with Article 102;
 - c state that, when the institutions award contracts on their own account, the law which applies to the contract is Union law complemented, where necessary, by a national law or, if necessary for contracts referred to in Article 121(1), exclusively national law;
 - d specify the competent court for hearing disputes;
 - e specify that the contractor shall comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of Directive 2014/24/EU;
 - f specify whether the transfer of intellectual property rights will be required;
 - g state that the price quoted in the tender is firm and non-revisable or lay down the conditions or formulas for revision of prices during the lifetime of the contract.

For the purposes of point (g) of the first subparagraph, if a revision of prices is set out in the contract, the contracting authority shall take particular account of:

- (i) the subject matter of the procurement and the economic situation in which it is taking place;
- (ii) the type of contract and tasks and its duration;
- (iii) its financial interests.

Points (c) and (d) of the first subparagraph may be waived for contracts signed in accordance with point (m) of Article 134(1).

Article 139

Technical specifications(Article 105(2) of the Financial Regulation)

1 Technical specifications shall allow equal access of economic operators to the procurement procedures and not have the effect of creating unjustified obstacles to the opening up of procurement to competition.

Technical specifications shall include the characteristics required for works, supplies or services, including minimum requirements, so that they fulfil the use for which they are intended by the contracting authority.

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- 2 The characteristics referred to in paragraph 1 may include as appropriate:
- a the quality levels;
 - b environmental performance and climate performance;
 - c for purchases intended for use by natural persons, the accessibility criteria for people with disabilities or the design for all users, except in duly justified cases;
 - d the levels and procedures of conformity assessment;
 - e performance or use of the supply;
 - f safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods;
 - g for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority is in a position to prescribe under general or specific regulations in relation to the finished works and to the materials or parts which they involve.
- 3 The technical specifications shall be formulated in any of the following ways:
- a in order of preference, by reference to European standards, European technical assessments, common technical specifications, international standards, other technical reference systems established by European standardisation bodies or, failing this, their national equivalents; every reference shall be accompanied by the words ‘or equivalent’;
 - b in terms of performance or of functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow the contracting authority to award the contract;
 - c by a combination of the two methods set out in points (a) and (b).
- 4 Where the contracting authority uses the option of referring to the specifications provided for in point (a) of paragraph 3, it shall not reject a tender on the grounds that it does not comply with those specifications once the tenderer proves, by any appropriate means, that the solution proposed satisfies in equivalent manner the requirements defined in the technical specifications.
- 5 Where the contracting authority uses the option provided for in point (b) of paragraph 3, to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender which complies with a national standard transposing a European standard, a European technical approval, a common technical specifications, an international standard or technical reference systems established by a European standardisation body, if those specifications address the performance or functional requirements which it has laid down.
- The tenderer shall prove by any appropriate means that the work, supply or service in compliance with the standard meets the performance or functional requirements set by the contracting authority.
- 6 Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics, it may require a specific label or specific requirements from a label, provided that all of the following conditions are satisfied:
- a the label requirements only concern criteria which are linked to the subject matter of the contract and are appropriate to define the characteristics of the purchase;
 - b the label requirements are based on objectively verifiable and non-discriminatory criteria;

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- c the labels are established in an open and transparent procedure in which all the relevant stakeholders may participate;
- d the labels are accessible to all interested parties;
- e the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

The contracting authority may require that economic operators provide a test report or a certificate as means of proof of conformity with the procurement documents from a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council⁽⁵⁾ or an equivalent conformity assessment body.

7 The contracting authority shall accept any other appropriate means of proof than those referred to in paragraph 6, such as a technical dossier from the manufacturer, where the economic operator had no access to the certificates or test reports, or no possibility of obtaining them or obtaining a specific label within the relevant time limits, for reasons that are not attributable to that economic operator and provided that the economic operator concerned proves that the works, supplies or services to be provided fulfil the requirements of the specific label or specific requirements indicated by the contracting authority.

8 Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain products or economic operators.

Such reference shall be permitted on an exceptional basis where a sufficiently detailed and intelligible description of the subject matter of the contract is not possible. Such reference shall be accompanied by the words 'or equivalent'.

Article 141

Declaration and evidence of absence of situation of exclusion (Articles 106 and 107 of the Financial Regulation)

1 For the purpose of Article 106(10) of the Financial Regulation, the contracting authority shall accept the European Single Procurement Document (ESPD) referred to in Directive 2014/24/EU or, failing that, a declaration on honour, signed and dated, stating that the economic operator is not in one of the situations referred to in paragraphs 1 and 4 of Article 106 and in Article 107 of the Financial Regulation or that it is in one of the cases referred to in point (a) of Article 106(7) of the Financial Regulation.

An economic operator may reuse an ESPD which has already been used in a previous procedure, provided that the economic operator confirms that the information contained therein continues to be correct.

Where the contracting authority limits the number of candidates under Article 104(3) of the Financial Regulation, all the candidates shall provide the evidence referred to in paragraph 3 of this Article.

Depending on its risk assessment, the contracting authority may decide not to request the ESPD or declaration on honour for any of the following:

- a procedures for very low value contracts under Article 137(2);

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- b procedures for contracts in the field of external actions with a value not exceeding EUR 20 000 under Articles 265(1), 267(1) or 269(1).

2 The successful tenderer shall provide, within a time limit set by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3, confirming the ESPD or the declaration on honour in the following cases:

- a for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 118(1) of the Financial Regulation;
- b for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Articles 265(1)(a), 267(1)(a) or 269(1)(a).

3 The contracting authority shall accept as satisfactory evidence that an economic operator is not in one of the situations described in points (a), (c), (d) or (f) of Article 106(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in its country of establishment showing that those requirements are satisfied.

The contracting authority shall accept, as satisfactory evidence that an economic operator is not in the situation described in point (a) or (b) of Article 106(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the certificate is not issued in the country concerned the economic operator may provide a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

4 The contracting authority shall waive the obligation of an economic operator to submit the documentary evidence referred to in paragraph 3 in the case of international organisations, if it can access it on a national database free of charge or if such evidence has already been submitted to it for the purposes of another procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the economic operator shall declare on its honour that the documentary evidence has already been provided in a previous procedure and confirm that no changes in its situation have occurred.

Article 142

Measures to avoid distortion of competition(Article 107(1) of the Financial Regulation)

The measures referred to in point (c) of Article 107(1) of the Financial Regulation shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders.

The candidate or tenderer concerned shall only be rejected from the procedure where there are no other means to ensure compliance with the principle of equal treatment.

Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

Article 143

Functioning of the database for the early detection and exclusion system(Articles 108(1), (2), (3), (4) and (12) of the Financial Regulation)

In order to ensure the functioning of the database referred in Article 108(1) of the Financial Regulation, the institutions, offices, bodies, agencies and entities referred to in points (c), (d) and (e) of Article 108(2) of the Financial Regulation shall designate authorised persons.

Where applicable, these authorised persons shall provide the information referred to in Article 108(3) of the Financial Regulation. They shall be granted access in accordance with paragraphs 4 and 12 of Article 108 of the Financial Regulation.

Authorised persons already designated by the entities referred to in point (d) of Article 108(2) of the Financial Regulation in accordance with the sector-specific rules may be used for the purposes of Article 108(12) of the Financial Regulation.

Information requested from the entities referred to in point (d) of Article 108(2) of the Financial Regulation shall be transmitted only through the Irregularity Management System which is the automated information system established by the Commission currently in use for reporting of fraud and irregularities, in accordance with the sector-specific rules.

Article 144

Panel(Article 108(6) of the Financial Regulation)

1 The Chair of the panel shall be appointed by the Commission. He or she shall be chosen from among former members of the Court of Auditors, the Court of Justice or former officials who have had at least the rank of Director-General in an institution of the Union other than the Commission. He or she shall be selected on the basis of his/her personal and professional qualities, extensive experience in legal and financial matters and proven competence, independence and integrity. The term of office shall be five years and shall not be renewable. The Chair shall be appointed as special adviser within the meaning of Article 5 of the Conditions of Employment of Other Servants of the European Union.

The Chair of the panel shall preside at all sessions of the panel. He/she shall be independent in the performance of his or her duties. He/she shall not have a conflict of interests between his or her duties as Chair of the panel and any other official duties.

2 Two permanent members shall be designated by the Commission. One additional member shall represent the requesting contracting authority and shall be designated in accordance with its own internal organisation.

3 The permanent secretariat of the panel shall ensure the following:

- a prepare the analysis of the information submitted to the panel pursuant to Article 108(8) (a) of the Financial Regulation;
- b liaise with the economic operators and the other authorising officers for the purposes of points (b), (c), and (f) of Article 108(8) of the Financial Regulation;

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

- c keep the repository of the recommendations adopted by the panel in accordance with Article 108(5) of the Financial Regulation and the decisions taken by the contracting authority in accordance with Article 106(3) of the Financial Regulation;
- d ensure the centralised publication in accordance with Article 106(16) of the Financial Regulation.

4 Each member of the panel shall consider each submitted case in accordance with the rules and procedures laid down in this Regulation, the Financial Regulation and any other applicable rules established by the Commission. Prior to his or her designation, and throughout his or her service, each member of the panel shall have the obligation to promptly disclose any acts likely to constitute a conflict of interests within the meaning of Article 57 of the Financial Regulation and Article 32 of this Regulation. Members of the panel shall recuse themselves from any case in which they have an actual conflict of interests.

5 The rules of procedure of the panel shall be adopted by the Commission.

Article 146

Selection criteria(Article 110(2) of the Financial Regulation)

1 The contracting authority shall indicate in the procurement documents the selection criteria, the minimum levels of capacity and the evidence required to prove this capacity. All requirements shall be related and proportionate to the subject matter of the contract.

The contracting authority shall specify in the procurement documents how groups of economic operators are to meet the selection criteria taking into account paragraph 6.

Where a contract is divided into lots, the contracting authority may set minimum levels of capacity for each lot. It may set additional minimum levels of capacity in case several lots are awarded to the same contractor.

2 With regard to capacity to pursue the professional activity, the contracting authority may require an economic operator to fulfil at least one of the following conditions:

- a be enrolled in a relevant professional or trade register, except for international organisations;
- b for service contracts, hold a particular authorisation proving that it is authorised to perform the contract in its country of establishment or be a member of a specific professional organisation.

3 When receiving requests to participate or tenders, the contracting authority shall accept the ESPD or, failing that, a declaration on honour stating that the candidate or tenderer fulfils the selection criteria.

The contracting authority may ask tenderers and candidates at any moment during the procedure to submit an updated declaration or all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

The contracting authority shall require the candidates or successful tenderer to submit up-to-date supporting documents except where it has already received them for the purpose of another procedure and provided that the documents are still up-to-date or it can access them on a national database free of charge.

4 The contracting authority may, depending on its assessment of risks, decide not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators in the following cases:

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

- a procedures for middle or low value contracts awarded by the institutions on their own account, with a value not exceeding the value referred to in Article 118(1) of the Financial Regulation;
- b procedures for contracts awarded in the field of external actions, with a value not exceeding the thresholds referred to in Articles 265(1)(a), 267(1)(a) or 269(1)(a).

Where the contracting authority decides not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators, no pre-financing shall be made.

5 An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment by those entities to that effect.

With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the contracting authority may require that the economic operator and those entities be jointly liable for the performance of the contract.

The contracting authority may request information from the tenderer on any part of the contract that the tenderer intends to subcontract and on the identity of any subcontractors.

For works or services provided at a facility directly under the oversight of the contracting authority, the contracting authority shall require the contractor to indicate the names, contacts and authorised representatives of subcontractors involved in the performance of the contract, including any changes of subcontractors.

6 The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely and the envisaged subcontractors, when subcontracting represents a significant part of the contract, fulfil the relevant selection criteria.

The contracting authority shall require that the economic operator replaces an entity or subcontractor which does not meet a relevant selection criterion.

7 In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, the contracting authority may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators, a participant in the group.

Article 147

Economic and financial capacity(Article 110(2) of the Financial Regulation)

1 To ensure that economic operators possess the necessary economic and financial capacity to perform the contract, the contracting authority may require in particular that:

- a economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract;

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- b economic operators provide information on their annual accounts showing ratios between assets and liability;
- c economic operators provide an appropriate level of professional risk indemnity insurance.

For the purposes of point (a) of the first subparagraph, the minimum yearly turnover shall not exceed two times the estimated annual contract value, except in duly justified cases linked to the nature of the purchase, which the contracting authority shall explain in the procurement documents.

For the purposes of point (b) of the first subparagraph, the contracting authority shall explain the methods and criteria for such ratios in the procurement documents.

2 In the case of dynamic purchasing systems, the maximum yearly turnover shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

3 The contracting authority shall define in the procurement documents the evidence to be provided by an economic operator to demonstrate its economic and financial capacity. It may request in particular one or more of the following documents:

- a appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- b financial statements or their extracts for a period equal to or less than the last three years for which accounts have been closed;
- c a statement of the economic operator's overall turnover and, where appropriate, turnover in the area covered by the contract for a maximum of the last three financial years available.

If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial capacity by any other document which the contracting authority considers appropriate.

Article 148

Technical and professional capacity(Article 110(2) of the Financial Regulation)

1 The contracting authority shall verify that candidates or tenderers fulfil the minimum selection criteria concerning technical and professional capacity in accordance with paragraphs 2 to 5.

2 The contracting authority shall define in the procurement documents the evidence to be provided by an economic operator to demonstrate its technical and professional capacity. It may request one or more of the following documents:

- a for works, supplies requiring siting or installation operations or services, the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance;
- b a list of the following:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and clients, public or private accompanied upon request by statements issued by the clients;
 - (ii) of the works carried out in the last five years, accompanied by certificates of satisfactory execution for the most important works;

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- c a statement of the technical equipment, tools or plant available to the economic operator for performing a service or works contract;
- d a description of the technical facilities and means available to the economic operator to for ensuring quality, and a description of available study and research facilities;
- e a reference to the technicians or technical bodies available to the economic operator, whether or not belonging directly to it, especially those responsible for quality control;
- f in respect of supplies: samples, descriptions or authentic photographs or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products clearly identified by references to technical specifications or standards;
- g for works or services, a statement of the average annual manpower and the number of managerial staff of the economic operator for the last three years;
- h an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;
- i an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

For the purposes of point (i) of point (b) of the first subparagraph, where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account.

For the purposes of point (ii) of point (b) of the first subparagraph, where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant works delivered or performed more than five years before will be taken into account.

3 Where the supplies or services are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the economic operator is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

4 Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, including on accessibility for disabled persons, it shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. The contracting authority shall also accept other evidence of equivalent quality assurance measures from an economic operator that has demonstrably no access to such certificates or has no possibility of obtaining such certificates within the relevant time limits, for reasons that are not attributable to that economic operator and provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

5 Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, it shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁽⁶⁾ or other environmental management standards based on the relevant European or international standards by accredited bodies. Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons

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that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

6 A contracting authority may conclude that an economic operator does not possess the required professional capacity to perform the contract to an appropriate quality standard where the contracting authority has established that the economic operator has conflicting interests which may negatively affect its performance.

Article 149

Award criteria(Article 110(3) of the Financial Regulation)

1 Quality criteria may include elements such as technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of their life cycle, organisation of the staff assigned to performing the contract, after-sales service, technical assistance or delivery conditions such as delivery date, delivery process and delivery period or period of completion.

2 The contracting authority shall specify, in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender except when using the lowest price method. Those weightings may be expressed as a range with an appropriate maximum spread.

The weighting applied to price or cost in relation to the other criteria must not result in the neutralisation of price or cost.

If weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

3 The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.

4 Life-cycle costing shall cover parts or all of the following costs, to the extent relevant, over the life cycle of works, supplies or services:

- a costs, borne by the contracting authority or other users, such as:
 - (i) costs relating to acquisition;
 - (ii) costs of use, such as consumption of energy and other resources;
 - (iii) maintenance costs;
 - (iv) end of life costs, such as collection and recycling costs;
- b costs attributed to environmental externalities linked to the works, supplies or services during their life cycle, provided their monetary value can be determined and verified.

5 Where the contracting authority assesses the costs using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the tenderers and the method which it will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs attributed to environmental externalities shall fulfil the following conditions:

- a it is based on objectively verifiable and non-discriminatory criteria;

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

- b it is accessible to all interested parties;
- c economic operators can provide the required data with reasonable effort.

Where applicable, the contracting authority shall use the mandatory common methods for the calculation of life-cycle costs provided for in Annex XIII of Directive 2014/24/EU.

Article 150

Use of electronic auctions(Article 110(5) of the Financial Regulation)

1 The contracting authority may use electronic auctions, in which new prices, revised downwards or new values concerning certain elements of tenders are presented.

The contracting authority 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.

2 In open, restricted or competitive procedures with negotiation, the contracting authority may decide that the award of a public contract is preceded by an electronic auction when the procurement documents can be established with precision.

An electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in Article 122(3)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 131.

The electronic auction shall be based on one of the award methods set out in Article 110(4) of the Financial Regulation.

3 The contracting authority which decides to hold an electronic auction shall state that fact in the contract notice.

The procurement documents shall include the following details:

- a the values of the features which will be the subject of electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;
- b any limits on the values which may be submitted, as they result from the specifications relating to the subject matter of the contract;
- c the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- d the relevant information concerning the electronic auction process including whether it includes phases and how it will be closed, as set out in paragraph 7;
- e the conditions under which the tenderers will be able to tender and, in particular, the minimum differences which will, where appropriate, be required when submitting the tender;
- f the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4 All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using the connections in accordance with the instructions. The invitation shall specify the date and time of the start of the electronic auction.

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The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5 The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender.

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. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the 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.

6 Throughout each phase of an electronic auction the contracting authority shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It may also, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announce the number of participants in any specific phase of the auction. It may not however disclose the identities of the tenderers during any phase of an electronic auction.

7 The contracting authority shall close an electronic auction in one or more of the following ways:

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

8 After closing an electronic auction, the contracting authority shall award the contract on the basis of the results of the electronic auction.

Article 151

Abnormally low tenders(Article 110(5) of the Financial Regulation)

1 If, for a given contract, the price or cost proposed in a tender appears to be abnormally low, the contracting authority shall request in writing details of the constituent elements of the price or cost which it considers relevant and shall give the tenderer the opportunity to present its observations.

The contracting authority may, in particular, take into consideration observations relating to:

- a the economics of the manufacturing process, of the provision of services or of the construction method;
- b the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- c the originality of the tender;
- d compliance of the tenderer with applicable obligations in the fields of environmental, social and labour law;

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

- e compliance of subcontractors with applicable obligations in the fields of environmental, social and labour law;
- f the possibility of the tenderer obtaining state aid in compliance with applicable rules.

2 The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

The contracting authority shall reject the tender, where it has established that the tender is abnormally low because it does not comply with applicable obligations in the fields of environmental, social and labour law.

3 Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, it may reject the tender on that sole ground only if the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU.

Article 152

Time limits for receipt of tenders and requests to participate(Article 111(1) of the Financial Regulation)

1 The contracting authority shall lay down time limits for the receipt of tenders and requests to participate.

When fixing time limits, the contracting authority shall take account of the complexity of the contract and the time required for drawing up tenders. The time limits shall be longer than the minimum time limits set out in this Article where tenders can only be drawn after a visit to the site or after an on-the-spot consultation of the documents supporting the procurement documents.

The time limits shall be prolonged by five days in any of the following cases:

- a the contracting authority does not offer direct access free of charge by electronic means to the procurement documents;
- b the contract notice is published in accordance with point (b) of Article 125(2).]

2 In open procedures for contracts with a value equal to or above the thresholds set in Article 170(1), the time limit for receipt of tenders shall be no less than [F142 days] from the date on which the contract notice is dispatched.

3 In restricted procedures, in cases of use of the competitive dialogue referred to in Article 132 and in negotiated procedures with publication of a contract notice for contracts above the thresholds set in Article 170(1), the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched.

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 170(1), the time limit for receipt of tenders shall be no less than 40 days from the date on which the invitation to tender is dispatched.

However, in the procedures after a call for expressions of interest referred to in Article 136(1), the time limit shall be:

- a no less than 21 days from the date on which the invitation to tender is dispatched for receipt of tenders in the case of the procedure referred to in Article 136(1)(a) and Article 136(3)(b)(i);

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- b no less than 10 days for receipt of requests to participate and no less than 21 days for receipt of tenders in the case of the two-step procedure referred to in Article 136(3)(b)(ii).

[^{F14} In restricted procedures and in competitive procedures with negotiation, the time limit for receipt of tenders shall be no less than 30 days from the date on which the invitation to tender is dispatched.

5 In a dynamic purchasing system, the time limit for receipt of tenders shall be no less than 10 days from the date on which the invitation to tender is dispatched.

6 In the procedures after a call for expressions of interest referred to in Article 136(1), the time limit shall be:

- a no less than 10 days from the date on which the invitation to tender is dispatched for receipt of tenders in the case of the procedure referred to in Article 136(1)(a) and Article 136(3)(b)(i);
- b no less than 10 days for receipt of requests to participate and no less than 10 days for receipt of tenders in the case of the two-step procedure referred to in Article 136(3)(b)(ii).

7 The contracting authority may reduce the time limits for receipt of tenders by five days for the open or restricted procedures if it accepts that tenders may be submitted by electronic means.

Article 153

Access to procurement documents and time limit to provide additional information(Article 111(1) of the Financial Regulation)

1 The contracting authority shall offer direct access free of charge by electronic means to the procurement documents from the date of publication of the contract notice or, for the procedures without contract notice or under Article 136, from the date of dispatch of the invitation to tender.

In justified cases, the contracting authority may transmit the procurement documents by other means it specifies if direct access by electronic means is not possible for technical reasons or if the procurement documents contain information of a confidential nature. In these cases, the third subparagraph of Article 152(1) shall apply except in urgent cases as provided for in Article 154(1).

The contracting authority may impose on economic operators requirements aimed at protecting the confidential nature of information contained in the procurement documents. It shall announce these requirements as well as how access to the procurement documents concerned can be obtained.

2 The contracting authority shall provide additional information linked to the procurement documents simultaneously and in writing to all interested economic operators as soon as possible.

The contracting authority shall not be bound to reply to requests for additional information made less than six working days before the deadline for receipt of tenders.

- 3 The contracting authority shall extend the time limit for receipt of tenders where:
 - a it did not provide additional information at the latest six days before the deadline for the receipt of tenders although the economic operator requested it in good time;

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Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

- b it makes significant changes to the procurement documents.

Article 154

Time limits in urgent cases(Article 111(1) of the Financial Regulation)

1 Where duly substantiated urgency renders impracticable the minimum time limits laid down in Articles 152(2) and 152(3) for open or restricted procedures, the contracting authority may set:

- a a time limit for the receipt of requests to participate or tenders in open procedures which shall not be less than 15 days from the date on which the contract notice was dispatched;
- b a time limit for the receipt of tenders for restricted procedures which shall not be less than 10 days from the date of dispatch of the invitation to tender.

2 In urgent cases, the time limit set out in the first subparagraph of Article 153(2) and in Article 153(3)(a) shall be four days.

Article 155

Arrangements for submission of tenders(Article 111(1) and (2) of the Financial Regulation)

1 The arrangements for the submission of tenders and requests to participate shall be determined by the contracting authority, which may choose an exclusive method of submission.

The means of communication chosen shall be such as to ensure that the following conditions are satisfied:

- a each submission contains all the information required for its evaluation;
- b the integrity of data is preserved;
- c the confidentiality of tenders and requests to participate is preserved and the contracting authority examines the content of tenders and requests to participate only after the time limit set for submitting them has expired;
- d the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 is ensured.

2 Except for contracts below the thresholds laid down in Article 118(1) of the Financial Regulation, devices for the electronic receipt of tenders and requests to participate shall guarantee, through technical means and appropriate procedures, that:

- a the economic operator can be authenticated with certainty;
- b the exact time and date of the receipt of tenders and requests to participate can be determined precisely;
- c it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- d only authorised persons may set or change the dates for opening data received;
- e during the different stages of the procurement procedure only authorised persons may have access to all data submitted and may give access to these data as needed for the procedure;
- f it may be reasonably ensured that any attempt to infringe any of the conditions set out in points (a) to (e) can be detected.

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

3 Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the electronic documents submitted by means of such systems shall be deemed to be the originals.

4 Where submission is by letter, candidates or tenderers may choose to submit requests to participate or tenders:

- a either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip;
- b by hand-delivery to the premises of the contracting authority by the tenderer or candidate in person or by an agent, in which case the evidence shall be constituted by the acknowledgement of receipt.

5 By submitting a request to participate or a tender, candidates or tenderers accept to receive notification of the outcome of the procedure by electronic means.

Article 155a

Electronic catalogues(Article 111(7) of the Financial Regulation)

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

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

- a state so in the contract notice;
- b indicate in the procurement documents all the necessary information concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

3 Where a multiple framework contract has been concluded following the submission of tenders in the form of electronic catalogues, the contracting authority may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues by using one of the following methods:

- a the contracting authority invites contractors to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;
- b the contracting authority notifies contractors that it intends to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question, provided that the use of that method has been announced in the procurement documents for the framework contract.

4 When using the method under point (b) of paragraph 3, the contracting authority shall notify contractors 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 contractors the possibility to refuse such collection of information.

The contracting authority shall allow for an adequate period between the notification and the actual collection of information.

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

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

Article 156

Tender guarantees(Article 111(3) of the Financial Regulation)

1 The contracting authority may require a tender guarantee, submitted in accordance with Article 163, representing 1 % to 2 % of the total value of the contract.

2 The contracting authority shall call in the tender guarantee if the tender is withdrawn before contract signature.

The contracting authority shall release the tender guarantee:

- a for tenderers rejected as referred to in point (b) of Article 159(2) and tenders rejected as referred to in point (c) of Article 159(2), after information on the outcome of the procedure;
- b for tenders ranked as referred to in point (e) of Article 159(2), when the contract is signed.

Article 157

Opening of tenders and requests to participate(Article 111(4) of the Financial Regulation)

1 In open procedures, authorised representatives from tenderers may attend the opening session.

2 Where the value of a contract is equal to or greater than the thresholds laid down in Article 118(1) of the Financial Regulation, the authorising officer responsible shall appoint a committee to open the tenders. The authorising officer may waive this obligation on the basis of a risk analysis when reopening competition within a framework contract and for the cases set out in Article 134(1) of this Regulation except points (d) and (g) of that Article.

The opening committee shall be made up of at least two persons representing at least two organisational entities of the institution concerned with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 57 of the Financial Regulation.

In the representations or local units referred to in Article 72 of this Regulation or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

3 In the case of a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure.

4 The contracting authority shall verify and ensure the integrity of the original tender including the financial offer and of the evidence of date and time of its receipt as provided for in points 2 and 4 of Article 155 by any appropriate method.

5 In open procedures, where the contract is awarded under the lowest price or lowest cost methods in accordance with Article 110(4) of the Financial Regulation, the prices quoted in tenders satisfying the requirements shall be read out loud.

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

6 The written record of the opening of the tenders received shall be signed by the person or persons in charge of opening or by members of the opening committee. It shall identify those tenders which comply with the requirements of Article 155 and those which do not, and shall give the grounds on which tenders were rejected as set out in Article 111(4) of the Financial Regulation. That record may be signed in an electronic system providing sufficient identification of the signatory.

Article 158

Evaluation of tenders and requests to participate(Article 111(5) of the Financial Regulation)

1 The authorising officer responsible shall appoint an evaluation committee to give an advisory opinion on contracts with a value equal to or greater than the thresholds referred to in Article 118(1) of the Financial Regulation. The authorising officer may waive this obligation on the basis of a risk analysis when reopening competition within a framework contract and for the cases set out in points (c), (e), (f) (i), (f) (iii) and (h) of Article 134(1).

However, the authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

2 The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the institutions or bodies referred to in Article 208 of the Financial Regulation with no hierarchical link between them, at least one of which does not come under the authorising officer responsible.

In the representations and local units referred to in Article 72 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

Outside experts may assist the committee by decision of the authorising officer responsible.

The authorising officer responsible shall ensure that the persons involved in the evaluation including outside experts satisfy the obligations laid down in Article 57 of the Financial Regulation.

3 In the case of a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure. The composition of the evaluation committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

4 Requests to participate and tenders which are suitable under paragraph (2) of Article 134, not irregular or unacceptable under paragraphs (2) and (3) of Article 135 shall be considered admissible.

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

Article 159

Results of the evaluation and award decision(Article 113(1) of the Financial Regulation)

1 The outcome of the evaluation shall be an evaluation report containing the proposal to award the contract. The evaluation report shall be dated and signed by the person or persons who carried out the evaluation or by the members of the evaluation committee. That report may be signed in an electronic system providing sufficient identification of the signatory.

If the evaluation committee was not given responsibility to verify the tenders against the exclusion and selection criteria, the evaluation report shall also be signed by the persons who were given that responsibility by the authorising officer responsible.

- 2 The evaluation report shall contain the following:
- a the name and address of the contracting authority, and the subject matter and value of the contract, or the subject matter and maximum value of the framework contract;
 - b the names of the candidates or tenderers rejected and the reasons for their rejection by reference to a situation set out in Article 107 of the Financial Regulation or to selection criteria;
 - c the references to the tenders rejected and the reasons for their rejection by reference to any of the following:
 - (i) non-compliance with minimum requirements as set out in point (a) of Article 110(1) of the Financial Regulation;
 - (ii) not meeting the minimum quality levels laid down in Article 149(3) of this Regulation;
 - (iii) tenders found to be abnormally low as referred to in Article 151 of this Regulation;
 - d the names of the candidates or tenderers selected and the reasons for their selection;
 - e the names of the tenderers to be ranked with the scores obtained and their justifications;
 - f the names of the proposed candidates or successful tenderer and the reasons for that choice;
 - g if known, the proportion of the contract or the framework contract which the proposed contractor intends to subcontract to third parties.
- 3 The contracting authority shall then take its decision providing any of the following:
- a an approval of the evaluation report containing all the information listed in paragraph 2 complemented by the following:
 - (i) the name of the successful tenderer and the reasons for that choice by reference to the pre-announced selection and award criteria, including where appropriate the reasons for not following the recommendation provided in the evaluation report;
 - (ii) in the case of negotiated procedure without prior publication, competitive procedure with negotiation or competitive dialogue, the circumstances referred to in Articles 134, 135 and 266 which justify their use;
 - b where appropriate, the reasons why the contracting authority has decided not to award a contract.

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

4 The authorising officer may merge the content of the evaluation report and award decision into a single document and sign it in any of the following cases:

- a for procedures below the thresholds set out in Article 118(1) of the Financial Regulation where only one tender was received;
- b when reopening competition within a framework contract where no evaluation committee was nominated;
- c for cases under points (c), (e), (f)(i), (f)(iii) and (h) of Article 134(1) where no evaluation committee was nominated.

5 In the case of a procurement procedure launched on an interinstitutional basis, the decision referred to in paragraph 3 shall be taken by the contracting authority responsible for the procurement procedure.

Article 160

Contacts between contracting authorities and candidates or tenderers(Article 112 of the Financial Regulation)

1 Contact between the contracting authority and candidates or tenderers during the procurement procedure may take place, exceptionally, under the conditions set out in paragraphs 2 and 3.

2 Before the closing date for receipt of requests to participate or tenders, the contracting authority may communicate the additional information in accordance with Article 153(2):

- a at the instance of candidates or tenderers, solely for the purpose of clarifying procurement documents;
- b at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the procurement documents.

3 In every case where contact has been made, and in the duly justified cases where contact has not been made as referred to in Article 96 of the Financial Regulation, a record shall be kept in the procurement file.

Article 161

Information for candidates and tenderers(Article 113(2) and (3) of the Financial Regulation)

1 The contracting authority shall inform all candidates or tenderers, simultaneously and individually, by electronic means of decisions reached concerning the outcome of the procedure as soon as possible after any of the following stages:

- a the opening phase for the cases referred to in Article 111(4) of the Financial Regulation;
- b a decision has been taken on the basis of exclusion and selection criteria in procurement procedures organised in two separate stages;
- c the award decision.

In each case, the contracting authority shall indicate the reasons why the request to participate or tender has not been accepted and the available legal remedies.

When informing the successful tenderer, the contracting authority shall specify that the decision notified does not constitute a commitment on its part.

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

2 The contracting authority shall communicate the information provided for in Article 113(3) of the Financial Regulation as soon as possible and in any case within 15 days of receipt of a request in writing. When the contracting authority awards contracts for its own account, it shall use electronic means. The tenderer may also send the request by electronic means.

3 When the contracting authority communicates through electronic means, information shall be deemed to have been received by candidates or tenderers if the contracting authority can prove to have sent it to the electronic address referred to in the tender or in the request to participate.

In such case, information shall be deemed to have been received by the candidate or tenderer on the date of dispatch by the contracting authority.]

Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2015/2462 of 30 October 2015 amending Delegated Regulation \(EU\) No 1268/2012 on the rules of application of Regulation \(EU, Euratom\) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.](#)

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3. (See end of Document for details)

- (1) ^{F1}Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).
- (2) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).
- (3) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).
- (4) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).
- (5) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).
- (6) Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).]

Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2015/2462 of 30 October 2015 amending Delegated Regulation \(EU\) No 1268/2012 on the rules of application of Regulation \(EU, Euratom\) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.](#)

Status:

Point in time view as at 01/01/2016.

Changes to legislation:

There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1268/2012 (repealed), Section 3.