

# Official Journal

## of the European Communities

Volume 20 No L 13

15 January 1977

English Edition

### Legislation

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## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DIRECTIVE

of 21 December 1976

coordinating procedures for the award of public supply contracts

(77/62/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas restrictions on the free movement of goods in respect of public supplies are prohibited by the terms of Articles 30 *et seq.* of the Treaty;

Whereas that prohibition should be supplemented by the coordination of the procedures relating to public supply contracts in order, by introducing equal conditions of competition for such contracts in all the Member States, to ensure a degree of transparency allowing the observance of this prohibition to be better supervised;

Whereas access to public supply contracts for products originating in countries other than the Member States is the subject of the Council resolution of 21 December 1976 <sup>(3)</sup> and of the Commission statement of 21 December 1976 <sup>(4)</sup>;

Whereas, in the case of public works contracts, coordination was based on certain principles relating to the prohibition of technical specifications having a discriminatory effect, to the advertising of contracts throughout the Community, to the fixing of objective criteria as to entitlement to compete for contracts and the introduction of a joint supervision procedure to ensure observance of these principles; whereas this method and these principles should be applied likewise to public supply contracts with adjustments to take account of the individual character of the contracts in question;

Whereas this Directive does not prevent the application, in particular, of Articles 36 and 223 of the Treaty;

Whereas the bodies currently administering transport services in the Member States are governed in some cases by public law, in others by private law;

<sup>(1)</sup> OJ No C 46, 9. 5. 1972, p. 34.

<sup>(2)</sup> OJ No C 30, 25. 3. 1972, p. 17.

<sup>(3)</sup> OJ No C 11, 15. 1. 1977, p. 1.

<sup>(4)</sup> OJ No C 11, 15. 1. 1977, p. 2.

whereas, in accordance with the objectives of the common transport policy equality of treatment should be ensured not only between separate undertakings concerned with the same mode of transport but also between such undertakings and undertakings concerned with other modes of transport;

Whereas, pending the drafting of measures for coordinating the procedures applicable to transport bodies and in view of the said special circumstances, those authorities referred to above, which by reason of their legal status would fall within it, should be excluded from the scope of the Directive;

Whereas it is necessary to avoid subjecting the production, distribution and transmission or transport services for water and energy and telecommunications services to different supply contract systems, depending on whether they come under the State, regional or local authorities or other legal persons governed by public law or whether they have separate legal personality; whereas it is therefore necessary to exclude from the scope of the Directive those services referred to above which by reason of their legal status would fall within its scope until such time as a final solution can be adopted in the light of experience;

Whereas provision must be made for exceptional cases where measures concerning the coordination of procedures may not necessarily be applied, but such cases must be expressly limited;

Whereas supply contracts of less than 200 000 European units of account can be exempted, inasmuch as their impact on competition is limited;

Whereas by Decision No 3289/75/ECSC of 18 December 1975 <sup>(1)</sup> the Commission, with the assent of the Council, defined a European unit of account which represents an average value of the variations in the currencies of the Member States; whereas the value of this unit of account in each of the currencies of the Member States is determined daily; whereas its use for the purposes of the Directive requires that a reference date be fixed;

Whereas to ensure development of effective competition in the field of public contracts it is

necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community; whereas the information contained in these notices must enable suppliers established in the Community to determine whether the proposed contracts are of interest to them; whereas for this purpose it is appropriate to give them adequate information about the goods to be supplied; whereas, more particularly in restricted procedures, advertisement is intended to enable suppliers of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions;

Whereas additional information concerning contracts must, as is customary in the Member States, be given in the contract documents for each contract or in an equivalent document;

Whereas, as indicated in the Council resolution of 21 December 1976 <sup>(2)</sup>, the Directive will be reviewed and may be revised,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### General provisions

#### Article 1

For the purpose of this Directive:

- (a) 'public supply contracts' shall be contracts for pecuniary consideration concluded in writing between a supplier (a natural or legal person) and one of the contracting authorities defined in (b) below for delivery of the products. Such delivery may in addition include siting and installation operations;
- (b) 'contracting authorities' shall be the State, regional or local authorities and the legal persons governed by public law or, in Member States where the latter are unknown, bodies corresponding thereto as specified in Annex I;
- (c) a supplier who submits a tender shall be designated by the term 'tenderer', and one who has sought an invitation to take part in a restricted procedure by the term 'candidate'.

<sup>(1)</sup> OJ No L 327, 19. 12. 1975, p. 4.

<sup>(2)</sup> OJ No C 11, 15. 1. 1977, p. 3.

*Article 2*

1. In awarding public supply contracts, the contracting authorities shall apply their national procedures, adapted to this Directive.

2. This Directive shall not apply to:

- (a) public supply contracts awarded by bodies which administer transport services;
- (b) public supply contracts awarded by bodies which administer production, distribution and transmission or transport services for water or energy and telecommunications services.

3. When the State, a regional or local authority or one of the legal persons governed by public law or corresponding bodies specified in Annex I grants to a body other than the contracting authority — regardless of its legal status — special or exclusive rights to engage in a public service activity, the instrument granting this right shall stipulate that the body in question must observe the principle of non-discrimination by nationality when awarding public supply contracts to third parties.

*Article 3*

This Directive shall not apply to public contracts governed by different procedural rules and awarded:

- (a) pursuant to an international agreement concluded between a Member State and one or more non-member countries and covering supplies intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Decision 71/306/EEC<sup>(1)</sup>, as amended by Decision 77/63/EEC<sup>(2)</sup>;
- (b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

<sup>(1)</sup> OJ No L 185, 16. 8. 1971, p. 15.

<sup>(2)</sup> See page 15 of this Official Journal.

*Article 4*

1. National procedures whereby any interested supplier may tender shall be subject to the provisions relating to 'open procedures' within the meaning of this Directive (Articles 7 to 10, 13, 17, 18 and 20 to 25).

2. National procedures whereby suppliers may tender only if invited to do so by the contracting authorities shall be subject to the provisions relating to 'restricted procedures' within the meaning of this Directive (Articles 7 to 9, 11, 12, 14, 15 and 17 to 25).

3. Contracts awarded in the cases referred to in Article 6 shall be subject to the provisions of Article 7 only.

*Article 5*

1. (a) The provisions of Titles II, III and IV and of Article 6 shall apply, under the conditions laid down in Article 4, to public supply contracts whose estimated value net of VAT is not less than 200 000 European units of account.

(b) The European unit of account shall be that defined by Decision No 3289/75/ECSC.

(c) The exchange value in national currencies to be applied shall be the average of the daily value of these currencies over the preceding 12 months calculated on the last day of October every two years, with effect from the following 1 January. This exchange value, calculated by the Commission, shall be published in the *Official Journal of the European Communities* during the first days of November.

(d) The method of calculation laid down in subparagraph (c) shall be examined, on the Commission's initiative, within the Advisory Committee for Public Contracts two years after its initial application.

(e) This method shall in any event be reviewed once the Council has acted on the proposal for a Regulation, submitted by the Commission, applying the European unit of account (EUA) to the general budget of the European Communities and to the legal acts adopted by the institutions.

2. In the case of regular supply contracts or of contracts which are to be renewed within a given

time the aggregate cost during the 12 months following first delivery or during the term of the contract where this is greater than 12 months must be taken as the basis for the application of paragraph 1.

3. If a proposed purchase of supplies of the same type may lead to contracts being awarded at the same time in separate parts, the estimated value of the sum total of these parts must be taken as the basis for the application of paragraph 1.

4. No purchase requirement for a certain quantity of supplies may be split up with the intention of avoiding the application of this Article.

#### Article 6

1. Contracting authorities may award their supply contracts without applying the procedures referred to in Article 4 (1) and (2) in the following cases:

- (a) in the absence of tenders, or in the event of irregular tenders following adoption of one of the procedures laid down in this Directive, or in the event of tenders which are unacceptable under national provisions that are in accordance with the provisions of Title IV, in so far as the original terms for the contract are not substantially altered;
- (b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the goods supplied may be manufactured or delivered only by a particular supplier;
- (c) where the articles involved are manufactured purely for purposes of research, experiment, study or development;
- (d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities, the time limit laid down in the procedures covered by Article 4 (1) and (2) cannot be kept;
- (e) for additional deliveries by the original supplier which are intended either as part replacement of normal supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the contracting authority to purchase equipment having different technical characteristics which

would result in incompatibility or disproportionate technical difficulties of operation or maintenance;

- (f) for goods quoted and purchased on a commodity market in the Community;
- (g) when supplies are declared secret or when their delivery must be accompanied by special security measures in accordance with the provisions laid down by law, regulation or administrative action in force in the Member State concerned, or when the protection of the basic interests of that State's security so requires;
- (h) for equipment supply contracts in the field of data-processing, and subject to any decisions of the Council taken on a proposal from the Commission and defining the categories of material to which the present exception does not apply. There can no longer be recourse to the present exception after 1 January 1981 other than by a decision of the Council taken on a proposal from the Commission to modify this date.

2. Before the end of June of each year, Member States shall send the Commission a statement of the number and total value of contracts awarded in the preceding calendar year on the basis of provisions (a) to (f) of paragraph 1, at least as regards contracts awarded by States, Länder, regions, provinces or departments. Member States shall, as far as possible, classify the contracts awarded according to each of the categories in the foregoing provisions.

## TITLE II

### Common rules in the technical field

#### Article 7

1. The technical specifications defined in Annex II and the description of testing, checking and acceptance methods shall figure in the general or the contractual documents relating to each contract. Such technical specifications may be defined by reference to appropriate standards.

In this case it is appropriate to make reference, in order of preference, to:

1. Community standards which are binding by virtue of an act of the Communities;
2. other Community standards (in particular ECSC standards) or European standards (in particular ESC and CENELEC standards) accepted by the country of the contracting authority;
3. international standards accepted by the country of the contracting authority (in particular ISO and IEC standards);
4. the national standards of the country of the contracting authority;
5. any other standard.

2. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention goods of a specific make or source or of a particular process and which have the effect of favouring or eliminating certain undertakings or products. In particular, the indication of trade marks, patents, types or specific origin or productions shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

#### Article 8

When projects are put up for competition or when invitations to tender permit tenderers to submit variations on a project of the administration, the contracting authorities may not reject a tender solely on the grounds that it has been drawn up by means of different technical calculations from those used in the country where the contract is being awarded, provided that the tender accords with the terms and conditions of the contract documents. Tenderers must include with their tenders all the evidence needed for examining the project and must supply any additional explanations which the contracting authorities consider necessary.

### TITLE III

#### Common advertising rules

##### Article 9

1. Contracting authorities who wish to award a public supply contract by open or restricted

procedure shall make known their intention by means of a notice.

2. Such notice shall be sent as soon as possible by the most appropriate channels to the Office for Official Publications of the European Communities and shall be published in full in the *Official Journal of the European Communities* in the official languages of the Communities, the original text alone being authentic. It shall be drawn up in accordance with the models given in Annex III.

3. Under the accelerated procedure provided for in Article 12, the notice shall be published, in its original language only, in all editions of the *Official Journal of the European Communities*.

4. The notice referred to in the preceding paragraphs shall be published in the *Official Journal of the European Communities* not later than nine days after the date of dispatch and, in the case of the accelerated procedure provided for in Article 12, not later than five days after that date.

5. The notice shall not be published in the Official Journals or in the press of the country of the contracting authorities before the date of its dispatch, and it shall mention this date. It shall not contain information other than that published in the *Official Journal of the European Communities*.

6. The contracting authorities must be able to supply evidence of the date of dispatch.

7. The cost of the publication of notices in the *Official Journal of the European Communities* shall be borne by the Communities. No notice may be longer than one page of the Journal; that is to say, approximately 650 words. Notices shall be drawn up in accordance with the model notices contained in Annex III. Every edition of the *Official Journal of the European Communities* which contains a notice or notices shall reproduce the model notice or notice on which the published notice or notices are based.

##### Article 10

1. In open procedure, the time limit for the receipt of tenders fixed by the contracting authorities shall be not less than 36 days from the date of dispatch of the notice.

2. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers by the contracting authorities or competent departments within four working days of receiving their application.

3. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not later than six days before the final date fixed for receipt of tenders.

4. Where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraph 1 shall be extended accordingly.

#### *Article 11*

1. In restricted procedures, the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 21 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite all successful candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents.

3. The time limit for the receipt of tenders fixed by the contracting authorities shall be not less than 21 days from the date of dispatch of the written invitation.

4. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not less than six days before the final date fixed for receipt of tenders.

5. Applications to be invited to compete and invitations to do so may be transmitted by letter, telegram, telex or telephone; if by one of the last three, they must be confirmed by letter.

6. Where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraph 3 shall be extended accordingly.

#### *Article 12*

1. In cases where urgency renders impracticable the time limits laid down in Article 11, the contracting authorities may fix the following time limits:

- (a) a time limit for the receipt of requests to participate which shall be not less than 12 days from the date of dispatch of the notice;
- (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

2. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not less than four days before the final date fixed for the receipt of tenders.

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex or telephone, they must be confirmed in writing.

#### *Article 13*

In open procedures the notice shall include at least the following information:

- (a) the date of dispatch to the Office for Official Publications of the European Communities;
- (b) the award procedure chosen;
- (c) the place of delivery, the nature and quantity of the goods to be supplied, and, if the contract is divided in several parts, whether suppliers have the possibility of tendering for some and/or all of the goods required;
- (d) any time limit for delivery;
- (e) the address, telephone number and, where applicable, the telegraphic address and telex number of the contracting authority;
- (f) the address of the service from which the relevant documents may be requested and the final date for making such a request; also the amount and terms of payment of any sum payable for such documents;

- (g) the final date for receipts of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (h) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (i) information about deposits and any other guarantees, whatever their form, which may be required by the contracting authorities;
- (j) the main terms concerning financing and payment and/or references to the provisions laid down by law or regulation in which these are contained;
- (k) in application of Article 18, the specific legal form which the grouping of suppliers may be required to take if awarded the contract;
- (l) the information and formalities necessary for an appraisal of the minimum economic and technical standards which the contracting authorities require of suppliers for their selection; these requirements may not be other than those referred to in Articles 20, 22 and 23;
- (m) the period during which tenderers shall be bound to keep their tenders open.

#### Article 14

In restricted procedures, the notice shall include at least the following information:

- (a) the information given in Article 13 (a), (b), (c), (d), (e) and (k);
- (b) the final date for receipt of requests to participate, the address to which they must be sent and the language or languages in which they must be written;
- (c) the final date on which invitations to tender shall be issued by the contracting authority;
- (d) the information to be given in the request to participate, in the form of statements which can later be checked, concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards which the contracting authorities require of suppliers for their selection; these requirements may not be other than those referred to in Articles 20, 22 and 23.

#### Article 15

An invitation to tender under restricted procedures shall include at least the following information:

- (a) the information given in Article 13 (f), (g), (h), (i), (j) and (m);
- (b) a reference to the notice mentioned in Article 14;
- (c) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 14 (d), or to supplement the information provided for in that Article under the conditions laid down in Articles 22 and 23;
- (d) the criteria for the award of the contract if these are not given in the notice.

#### Article 16

The contracting authorities may publish in the *Official Journal of the European Communities* notices of public supply contracts which are not subject to compulsory advertising measures provided for in this Directive, where the value of such contracts is not less than 100 000 European units of account.

### TITLE IV

#### Common rules on participation

#### Article 17

1. Contracts shall be awarded on the basis of the criteria laid down in Chapter 2 of this Title after the suitability of suppliers not excluded under Article 20 has been checked. Checks shall be carried out by the contracting authorities in accordance with the criteria of economic, financial and technical capacity referred to in Articles 22 to 24.
2. The contracting authorities shall respect fully the confidential nature of any information furnished by the suppliers.

#### Article 18

Tenders may be submitted by groupings of suppliers. These groupings shall not be required to assume a specific legal form in order to submit the tender; however, the grouping selected may be required to do

so if it is awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

#### Article 19

1. In restricted procedures the contracting authorities shall on the basis of the information given in accordance with Article 14 (d) select from among the candidates eligible under Articles 20 to 24 those whom they will invite to tender.

2. Each Member State shall ensure that its contracting authorities issue invitations to those suppliers of other Member States who satisfy the necessary requirements under the same conditions as to its national suppliers.

#### Chapter 1

##### Criteria for qualitative selection

#### Article 20

1. Any supplier may be excluded from participation in the contract who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, whose business activities have been suspended or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or is the subject of any other similar proceedings under national laws or regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can prove;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the statutory provisions of the country in which he is established or those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the statutory provisions of the country in which he is

established or those of the country of the contracting authority;

- (g) is guilty of serious misrepresentation in supplying the information required under this Chapter.

2. Where the contracting authority requires of the supplier proof that none of the cases quoted in (a), (b), (c), (e) or (f) of paragraph 1 applies to him, it shall accept as sufficient evidence:

- for (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a judicial or administrative authority in the country of origin or in the country whence that person comes showing that none of these cases applies to the supplier;
- for (e) or (f), a certificate issued by the competent authority in the Member State concerned.

3. Where the country in question does not issue such documents or certificates or where these do not cover all the cases quoted in (a), (b) or (c) of paragraph 1, they may be replaced by a declaration on oath made by the person concerned before a judicial or administrative authority, a notary or any other competent authority in the Member State concerned. In Member States where there is no provision for declaration on oath it may be replaced by a solemn declaration. The competent authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

4. Member States shall, within the time limit laid down in Article 30 designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

#### Article 21

Any supplier wishing to take part in a public supply contract may be requested to prove his enrolment in the professional or trade register under the conditions laid down by the laws of the Community country in which he is established: in Germany on the Handelsregister or Handwerksrolle; in Belgium on the registre du commerce/Handelsregister; in Denmark on the Aktieselskabs-Registret, Forenings-Registret or Handelsregistret; in France on the registre du commerce and répertoire des métiers; in Italy on the registro della camera di commercio, industria, agricoltura e artigianato or registro delle commissioni provinciali per

l'artigianato; in Luxembourg on the registre aux firmes and the rôle de la chambre des métiers, and in the Netherlands on the Handelsregister. In the United Kingdom and Ireland the supplier may be requested to show that he is certified as incorporated or registered by the Registrar of Companies or the Registrar of Friendly Societies or, if he is not so certified, by providing a certificate of a declaration on oath that he is carrying on business in the trade in question in the country in which he is established, at a specific place of business and under a specific trading name.

#### Article 22

1. Proof of the supplier's financial and economic standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from bankers;
- (b) submission of the undertaking's balance-sheets or extracts therefrom;
- (c) a statement of the undertaking's overall turnover and its turnover in respect of the goods to which the contract relates for the three previous financial years.

2. The contracting authorities shall specify in the notice or in the invitation to tender which reference or references they have chosen and which references other than those mentioned under paragraph 1 are to be produced.

3. If, for any valid reason, the supplier is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

#### Article 23

1. Evidence of the supplier's technical capacity may be furnished by one or more of the following means according to the nature, quantity and purpose of the goods to be supplied:

- (a) a list of the principal deliveries effected in the past three years, with the sums, dates and recipients, public or private, involved:
  - where to public authorities awarding contracts, evidence to be in the form of certificates issued or countersigned by the competent authority;
  - where to private purchasers, delivery to be certified by the purchaser or, failing this,

simply declared by the supplier to have been effected;

- (b) a description of the undertaking's technical facilities, its measures for ensuring quality and its study and research facilities;
- (c) indication of the technicians or technical bodies involved, whether or not belonging directly to the undertaking, especially those responsible for quality control;
- (d) samples, description and/or photographs of the products to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- (e) certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to certain specifications or standards of goods clearly identified by references to specifications or standards;
- (f) where the goods to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier is established, subject to that body's agreement, on the production capacities of the supplier and if necessary on his study and research facilities and quality control measures.

2. The contracting authority shall specify in the notice which references he wishes to receive.

3. The extent of the information referred to in paragraph 1 must be confined to the subject of the contract and the contracting authority must take into consideration the legitimate interests of the supplier as regards the protection of the technical secrets of his undertaking.

#### Article 24

Within the limits of Articles 20 to 23 the contracting authority may invite the suppliers to supplement the certificates and documents submitted or to clarify them.

### Chapter 2

#### Criteria for the award of contracts

#### Article 25

1. The criteria on which the contracting authority shall base the award of contracts shall be:

- (a) either the lowest price only;
- (b) or, when the award is made to the most economically advantageous tender, various criteria according to the contract in question: e.g. price, delivery date, running costs cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance.
2. In the latter instance, the contracting authorities shall state in the contract documents or in the contract notice all the criteria they intend to apply to the award where possible in descending order of importance.
3. The Italian 'anonymous envelope' procedure may be retained for a period of three years following expiry of the time limit laid down in Article 30.
4. Paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria within the framework of rules existing at the time this Directive is adopted, whose aim is to give preference to certain tenderers, on conditions that the rules invoked are compatible with the Treaty.
5. If, for a given contract, tenders are obviously abnormally low in relation to the goods to be supplied, the contracting authority shall examine the details of the tenders before deciding to whom it will award the contract. For this purpose it shall request the tenderer to furnish the necessary explanations and, where appropriate, it shall indicate which parts it finds unacceptable.
6. The result of the examination referred to in paragraph 5 shall be taken into account when the contract is awarded.
7. If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must justify the rejection of tenders which it considers to be too low to the Advisory Committee for Public Contracts.

## TITLE V

### Final provisions

#### Article 26

This Directive shall not prevent the implementation of provisions contained in Italian Law No 835 of 6 October 1950 (Official Gazette No 245 of 24 October

1950 of the Italian Republic) and in modifications thereto in force on the date on which this Directive is adopted; this is without prejudice to the compatibility of these provisions with the Treaty.

#### Article 27

1. Member States shall inform the Commission of national provisions covered by Articles 25 (4) and 26 and of the rules for applying them.
2. Member States concerned shall forward to the Commission, initially 30 months after notification of the Directive and thereafter every year, a report describing the implementation of these provisions. The reports shall be submitted to the Advisory Committee for Public Contracts.

#### Article 28

The calculation of all the time limits laid down in this Directive shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits <sup>(1)</sup>.

#### Article 29

1. In order to allow assessment of the results of applying the Directive, Member States shall forward an annual statistical report to the Commission on the contracts awarded by the central or federal contracting authorities in accordance with this Directive, the first one to be submitted 30 months after notification of the Directive. The Commission shall determine the nature of the statistical information after consulting the Advisory Committee for Public Contracts.
2. Taking into account in particular the outcome of the multilateral trade negotiations, the Commission shall, after consulting the Advisory Committee for Public Contracts, determine the extent, breakdown and arrangements for the publication of this statistical report.
3. The Commission may request information concerning contracts awarded by other authorities which are entitled to award contracts and which are subject to the Directive with a view to discussing

<sup>(1)</sup> OJ No L 124, 8. 6. 1971, p. 1.

contracts in the Advisory Committee for Public Contracts.

*Article 30*

Member States shall adopt the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

*Article 31*

Member States shall ensure that the texts of the basic provisions of domestic law, whether laws, regulations

or administrative provisions, which they adopt in the field covered by this Directive, are communicated to the Commission.

*Article 32*

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1976.

*For the Council*

*The President*

A. P. L. M. M. van der STEE

**ANNEX I**

**LIST OF LEGAL PERSONS GOVERNED BY PUBLIC LAW AND BODIES CORRESPONDING THERETO REFERRED TO IN ARTICLE 1 (b)**

**I. In all Member States:**

associations governed by public law or bodies corresponding thereto formed by regional or local authorities, e.g. 'associations de communes', 'syndicats de communes', 'Gemeindeverbände', etc.

**II. In Germany:**

the 'bundesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts'; the 'landesunmittelbaren Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts' subject to State budgetary supervision.

**III. In Belgium:**

- 'le Fonds des Routes 1955-1969' — 'het Wegenfonds',
- 'la Régie des Voies Aériennes' — 'de Regie der luchtwegen',
- public social assistance centres,
- church councils,
- 'l'Office Régulateur de la Navigation Intérieure' — 'de Dienst voor regeling van de binnenvaart',
- 'la Régie des services frigorifiques de l'État belge' — 'de Regie der Belgische Rijkskoel- en Vriesdiensten'.

**IV. In Denmark:**

'andre forvaltningssubjekter'.

**V. In France:**

- administrative public bodies at national, regional, departmental and local levels,
- universities, public scientific and cultural bodies and other establishments as defined by the Law setting out guidelines for Higher Education No 68-978 of 12 November 1968

**VI. In Ireland:**

other public authorities whose public supply contracts are subject to control by the State.

**VII. In Italy:**

- State universities, State university institutes, consortia for university development works,
- higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories,
- the 'Enti di riforma fondiaria',
- welfare and benevolent institutes of all kinds.

**VIII. In Luxembourg:**

public bodies subject to control by the Government, by an association of municipal corporations or by a municipal corporation.

**IX. In the Netherlands:**

- the 'Waterschappen',
- the 'instellingen van wetenschappelijk onderwijs vermeld in Article 15 van de Wet op het Wetenschappelijk Onderwijs (1960)', the 'academische ziekenhuizen',
- the 'Nederlandse Centrale Organisatie voor toegepast natuurwetenschappelijk Onderzoek (TNO)' and its dependent organizations.

**X. In the United Kingdom:**

- Education Authorities,
- Fire Authorities,
- National Health Service Authorities,
- Police Authorities,
- Commission for the New Towns,
- New Towns Corporations,
- Scottish Special Housing Association,
- Northern Ireland Housing Executive.

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**ANNEX II****TECHNICAL SPECIFICATIONS WITHIN THE MEANING OF THIS DIRECTIVE**

Within the meaning of this Directive, technical specifications in the field of public supply contracts shall comprise all the technical requirements given in the contract documents which permit an objective description of a material, product or supply (especially quality, performance) so that that material, product or supply fulfils the purpose for which it is intended by the contracting authority.

The technical specifications shall include all the relevant mechanical, physical and chemical properties, the classifications and standards, and the test, inspection and acceptance conditions for supplies or the materials and parts which they involve, in so far as they are required by the contracting authority. A sample of the material or part to be supplied may be provided in addition to or in substitution for the technical specifications.

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## ANNEX III

## MODEL NOTICES OF SUPPLY CONTRACTS

## A. Open procedures

1. The name, address, telephone number and, where applicable, telegraphic address and telex number of the contracting authority (Article 13 (e)):
2. The award procedure chosen (Article 13 (b)):
3. (a) The place of delivery (Article 13 (c)):  
(b) The nature and quantity of goods to be supplied (Article 13 (c)):  
(c) Whether suppliers can tender for some and/or all of the goods required (Article 13 (c)):
4. Any time limit for delivery (Article 13 (d)):
5. (a) Name and address of the service from which the relevant documents may be requested (Article 13 (f)):  
(b) The final date for making such request (Article 13 (f)):  
(c) Where applicable, the amount and terms of payment of any sum payable for such documents (Article 13 (f)):
6. (a) The final date for receipt of tenders (Article 13 (g)):  
(b) The address to which they must be sent (Article 13 (g)):  
(c) The language or languages in which they must be drawn up (Article 13 (g)):
7. (a) The persons authorized to be present at the opening of tenders (Article 13 (h)):  
(b) The date, time and place of this opening (Article 13 (h)):
8. Any deposits and guarantees required (Article 13 (i)):
9. The main terms concerning financing and payment and/or references to the provisions regulating these (Article 13 (j)):
10. Where applicable, the legal form to be taken by the grouping of suppliers winning the contract (Article 13 (k)):
11. The information and formalities necessary for an appraisal of the minimum economic and technical standards required of the supplier (Article 13 (l)):
12. The period during which the tenderer is bound to keep open his tender (Article 13 (m)):
13. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents (Article 25):
14. Other information:
15. The date of dispatch of the notice (Article 13 (a)):

**B. Restricted procedures**

1. The name, address, telephone number and, where applicable, telegraphic address and telex number of the contracting authority (Article 14 (a)):
  2. The award procedure chosen (Article 14 (a)):
  3. (a) The place of delivery (Article 14 (a)):  
(b) The nature and quantity of goods to be supplied (Article 14 (a)):  
(c) Whether suppliers can tender for some and/or all of the goods required (Article 14 (a)):
  4. Any time limit for delivery (Article 14 (a)):
  5. Where applicable, the legal form to be assumed by the grouping of suppliers winning the contract (Article 14 (a)):
  6. (a) The final date for the receipt of requests to participate (Article 14 (b)):  
(b) The address to which they must be sent (Article 14 (b)):  
(c) The language or languages in which they must be drawn up (Article 14 (b)):
  7. The final date for the dispatch of invitations to tender (Article 14 (c)):
  8. Information concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him (Article 14 (d)):
  9. The criteria for the award of the contract if these are not stated in the invitation to tender (Article 15 (d)):
  10. Other information:
  11. The date of dispatch of the notice (Article 14 (a)):
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**COUNCIL DECISION****of 21 December 1976****amending Decision 71/306/EEC setting up an Advisory Committee for Public Contracts****(77/63/EEC)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission,

Whereas the implementation of the measures adopted by the Council in the field of public supply contracts may raise problems which it seems desirable to examine in common with those arising in the field of public works contracts;

Whereas it is advisable for this purpose to extend the function and composition of the Advisory Committee for Public Works Contracts,

HAS DECIDED AS FOLLOWS:

*Article 1*

Decision 71/306/EEC shall be amended as follows:

- (a) in Article 1, the word 'works' shall be deleted;
- (b) in Article 2, immediately after the words 'public works', the words 'and public supplies' shall be added; and

- (c) in the second paragraph of Article 3, the words 'one alternate' shall be deleted and the words 'one or two alternates' substituted.

*Article 2*

From the date on which this Decision takes effect, the Committee shall be renamed the Advisory Committee for Public Contracts.

*Article 3*

This Decision shall be published in the *Official Journal of the European Communities*.

It shall take effect on the date of its publication.

Done at Brussels, 21 December 1976.

*For the Council*

*The President*

A. P. L. M. M. van der STEE

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