



EDF GUIDANCE PAPER

**ON THE IMPLEMENTATION OF EU PUBLIC
PROCUREMENT DIRECTIVES**

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I. Introduction

I.1 What is public procurement?

Public procurement is the purchase of goods, services and public works by governments and public utilities.

Local and regional authorities and public utilities regularly purchase **goods** such as computers, office equipment or public transport vehicles; **services** such as food catering or cleaning; and **public works** such as improvements to the urban environment, installation of new public transport infrastructure or construction of new buildings.

Public procurement has an important effect on the economy. In the EU in 2002, total public procurement transactions accounted for about 16% of the European Union's GDP, equivalent to 1500 billion Euros. Public procurement contracts play an important economic role in sectors such as construction and public works, transport, energy, telecommunications, and heavy industry.

Public procurement rules have direct impact on the daily lives of European citizens. For example, public procurement contracts effect:

- public transport
- infrastructure works
- built environment
- urban planning
- services (in schools, hospitals, ministries...)
- food distributed in school canteens
- equipment (computers, furniture, etc) in public offices
- water supplies
- waste treatment

Public procurement rules relate to procedures for the award of public supply, public service and public works contracts across the European Union and the European Economic Area. Two new European Union directives adopted in 2004 change these rules.

I.2 Public procurement affects people with disabilities

Decisions to award public procurement contracts are taken by public authorities or entities responsible at local or regional level for public purchases of products, services and works. These decisions have a substantial impact on:

- environment (including the built environment)
- employment conditions
- human rights in the local community and globally
- health
- social inclusion of disadvantaged or discriminated groups such as people with disabilities

In all of these areas, public procurement decisions affect the lives of people with disabilities across Europe.

Public procurement legislation can either favour or limit **sustainable development**, since public procurement affects such an important share of the market.

The possibility to include requirements on accessibility for people with reduced mobility and employment of disabled people can contribute to greater sustainability and to changing practices both in the private and public sector. It is more beneficial for industries to develop all of their products or services according to requirements set out by public authorities, rather than to issue two lines of products or services, one line that is accessible (that meets the requirement of public authorities) and one line that is not¹. Neglecting these issues at the contracting stage of a project, often leads to later additional costs for public authorities.

Public authorities have a responsibility to ensure that all citizens can benefit from their investments of public resources. Such investments should contribute to healthy and environmentally sound communities

¹ This has been the case for example in the US as a consequence of regulation 508 which imposes accessibility rules for federal procurement of ICT services.



which are accessible to all and which have a high level of employment and social inclusion.

I.3 New EU public procurement directives: their impact at national level

The European Union has just adopted two directives revising European Public Procurement rules – A General Directive combines public supplies, works and services (2004/18/EC), and the Utilities Directive covers Energy (electricity, gas heat), water, transport (including airports and harbours) and postal services (2004/17/EC)².

These directives, which aim at ensuring the development of an internal market and non discrimination of contractors from other EU countries, as well as Norway, Iceland and Liechtenstein, must be transposed and be applied in national or regional legislation, according to the legislative system of powers in your country.

Public procurement frameworks vary from country to country. Member States with a long standing procurement tradition have developed their own legislative framework, which they will have to amend in order to ensure consistency with EU legislation. Other countries will just transpose as such EU rules as they are.

In theory, EU rules only relate to contracts above a certain threshold³, while in practice they do substantially influence national legislation. Also the directives contain in Annex IV the name of all central public entities in each Member States that will have to meet the requirements of the directive, in addition to public authorities at all levels.

² Directive 2004/18/EC of the European parliament and of the Council on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts, (O.J. L 134, 30.4.2004) and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (O.J. L 134 30.4.2004).

³ See articles 7-8 of the General directive (162 000 euros for supplies and services, 249 000 for supplies and services tendered by central contracting authorities listed in Annex IV of the Directive, 6.242 000 for public works contracts) and article 16 of the utilities directive (449 000 euros for supplies and services, and 6 242 000 for public works). These amounts do not include VAT.



If a company feels EU rules have not been respected or correctly transposed into national legislation, and has as a result been excluded from a tender, it can challenge the decision. The European Commission has on the basis of complaints brought cases to the European Court of Justice or opened infringement procedures against a Member State, obliging them to review the legislation.

The revised public procurement Directives offer scope for contracting authorities to consider social and accessibility issues, and it is crucial that the public authorities at all levels and Regional Assemblies positively implement these provisions as far as the new rules allow.

Member states have **21 months** from the date of publication in the Official Journal (30 April 2004) to implement Directives into national legislation i.e. by **February 2006**.

I.4 Why you need to act

EDF has actively lobbied to strengthen the scope for consideration of social, employment, and disability issues in the awarding of public contracts.

In the past, the scope for considering such objectives has been vague, leading to a generation of court cases to clarify the rules.

The results achieved in the current text have been obtained thanks to a partnership among all stakeholders (environmental groups, trade unions, and social NGO's, for example). However, the campaign for a stronger text was met with fierce resistance from the industrial sector, and with part of the political forces, and of the European Commission.

It is now vital that these achievements are not undermined or limited in scope at national level.

The purpose of this guide is to give advice on the implementation of the two EU directives within national or regional legislative frameworks. Your lobbying efforts will ensure strong and effective national transposition of the EU Public Procurement directives.

II. Key elements of the directive from a DISABILITY perspective

According to new rules, social, and accessibility considerations can be included into the different phases of the public procurement directives.

- a) When drawing up a call for tender, public authorities must identify a number of characteristics which the product, work or service will have to meet. Rules and an outline of these characteristics are specified in articles and annexes relating to **technical specifications** of a tender.

In particular, the EU directives refer specifically to technical specifications relating to **accessibility for disabled people and design for all requirements**.

- b) Public authorities can also decide to impose contract **performance conditions** on the company that wins a call for tender; these may range from environmental requirements to the obligation to **employ a certain percentage of disabled people** to do the job. These conditions must be established in the call for tender.
- c) Companies who do not respect environmental or social legislation (such as non-discrimination legislation) or who have been found guilty of fraud can be **excluded**.
- d) The directives also include rules on the possibility to **reserve contracts** for certain kinds of companies, which benefit undertakings employing a majority of people with disabilities.
- e) Social considerations such as employment of disabled people and accessibility can be taken into account in the final choice of a tender: **the award criteria**. These must be specified in the call for tender.

III. Description of main provisions and recommendations for actions

The following section will examine the key provisions of the directives⁴ and highlight main issues to be taken into account in the implementation process at national level.

In the Annex to this document you will find the full text of the articles referred to in each section. The guide itself only highlights provisions directly relevant for people with disabilities.

Social considerations and accessibility provisions have been inserted in several sections of the directives, covering the main phases of the procurement procedure. Some of the provisions refer specifically to people with disabilities, as a result of the active lobbying of EDF with the support of the Spanish National Council.

Such inclusion removes legal uncertainties in a number of areas, as public authorities wishing to use such criteria could within the previous framework run the risk of being challenged in Court.

Recommendations

- (1) It is important that framework provisions of the Directive are broadened and made more explicit in national legislation.
- (2) In many cases requirements provided for in the EU Directives are not compulsory. Your organisation should lobby to have clear obligations included in national or regional rules; otherwise requirements such as accessibility criteria might be disregarded by public entities managing the procurement procedure.
- (3) A system of certification or a national registry should be set up, as well as quality labels to ensure compliance with some of the requirements (for instance accessibility provisions) or to prove compliance with legislation in force (such as non discrimination provisions and/or employment quotas).

⁴ Numbering of the Articles refers to Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the General Directive). For numbering of the Articles of the Directive 2004/17/EC relating to energy, water, and transport (the Utilities Directive), please see Annex I.

III.1 Accessibility provisions in technical specifications of tenders

Content

Accessibility or design for all criteria for disabled persons can be included in the definition of technical specifications (requirements) of a contract bid, as established in article 23 and in Annex VI.

According to the article, **accessibility or design for all criteria should be taken into account whenever possible.**

Design for all requirements and accessibility for disabled persons are also mentioned in Annex VI which defines further the use of technical specifications.

Technical specifications may be also used as award criteria (when making the final choice of a tenderer) as outlined in recital 46.

Further explanation on the inclusion of accessibility or design for all criteria in technical specifications is included in Recital 29 which states that these provisions should be clearly defined.

A company's technical and/or professional abilities in public works and public service contracts will be assessed by considering, for example, the company's past contracts for works or services and measures used by the company to ensure quality (Article 48).

As an alternative to certification procedures, member States may draw an official list of companies that meet the requirements (Article 52).

Finally it is important to note that technical specifications might also include additional provisions such as employment of disabled people if the product, services, or work is also intended for disabled people. This is true in a majority of contracts tendered (public buildings, built environment, transport, services etc.)

Recommendations

4. It is important that the reference to **‘whenever possible’** in provisions regarding accessibility is interpreted in the broadest terms. Accessibility requirements should be included in legislation as a general rule. Exceptions to this rule should be restricted to precise cases. National legislation should include clear guidelines on when public authorities should take accessibility criteria into account.
5. It is critical that national legislation includes a **definition of accessibility** and **design for all criteria** for people with disabilities for all relevant areas covered by the directives (supplies such as ICT products, works such as buildings and built environment, services including transport).
6. Whenever legislation at national or regional level imposes obligations on accessibility (for the built environment, products, services, etc.) we recommend including a **cross reference** to that legislation **in the public procurement law**.
7. A procedure for **verifying** the ability of a tenderer to perform the contract (with regard to accessibility requirements) should be put in place.

III.2 Conditions for the performance of a contract

Content

Public authorities may lay down special conditions on performance of the contract and such conditions may concern social considerations (Article 26).

Contract performance conditions are specified in Recital 33, which includes a non exhaustive list of social considerations. They may for instance be intended to promote on-site vocational training, the employment of people experiencing particular difficulty in achieving

integration in the labour market, the fight against unemployment. It is also possible to include requirements – which would be applicable during the performance of the contract - to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions not implemented in national law, and to recruit more disabled persons than are required under national legislation (in countries where quota systems exist).

Recital 34 also specifies that national legislation on employment, social security, health and safety as well as collective agreements must be applied in the performance of a contract. In cross border situations, the EU directive on posting of workers will apply. The recital also clearly indicates that non compliance will lead to the exclusion of the bidding company.

Recommendations

8. It is crucial that the possibility to include employment of disabled people in contract performance conditions is **codified in national (or regional) legislation**.
9. National legislation should include a **non-exhaustive list of social considerations** (which can go beyond the list included in the EU directives), as well as guidelines on the use of social considerations by contracting authorities.
10. **Measures** for promoting employment or training for people with disabilities should be included in the definition of possible social considerations.
11. **A system of control** should be put in place, whereby companies are requested to provide proof of employment or training provided.

III.3 Employment Rights, conditions and protection

Content

The new directives reinforce criteria for ensuring compliance with social legislation, and require the exclusion of companies in breach.

Contracting authorities may state in the contract documents, or be obliged to do so by a Member State, the bodies for obtaining **information on obligations relating to employment protection and working conditions** in force in the place where the contract will be carried out. This ensures that companies from outside the Member State who are bidding for the contract cannot claim they were not aware of obligations under the Member State's social legislation.

Bidding companies have to indicate that they have taken account of these obligations (Article 27).

Various articles in the Directives set out verification of suitability of participants relating to criminal records, bankruptcy etc., and scope for exclusion, (Articles 44-48).

In the case of **abnormally low (price) tenders**, contracting authorities may request further information on employment protection and working conditions in force at the place where the work, service or supply is performed (Article 55).

Recital 43 indicates that **companies found guilty by a public instance of breaching national provisions implementing EU legislation on non discrimination**, should be excluded from tenders.

Recommendations

12. National public procurement provisions should include **obligation** for public authorities to ask companies to indicate in their tendering documents how they have **taken into account key legislation** in the area of employment for people with disabilities. This should also include national legislation on equal treatment and non discrimination in access to employment.

13. For countries where legislation on **employment quotas** is in place, it is important that companies must be obliged to provide **proof of compliance**.
14. In the case of provisions for non discrimination in access to employment, **copy of an action plan or measures developed** by a company to ensure equal treatment of candidates and employees should be requested by public authorities.

III.4 Awarding Contracts

Content

Article 53 does not explicitly include the possibility to use **social considerations** in the procedure for the final choice (**award**) of a tender. Nevertheless, inclusion of social criteria is possible under certain conditions, namely, when the choice is made on the basis of the tender which is 'most economically advantageous from the point of view of the contracting authority'.

Alternatively, public authorities may decide to choose a tender according to the lowest price offer (Article 53).

The wording "most economically advantageous from the point of view of the contracting authority" must be read together with Recital 1 (see Annex) on social and environmental case-law (including *Nord Pas de Calais* case on long term unemployed, and *Helsinki Bus* case on community interest in reducing pollution).

Recital 1 bases the Directive on European Court of Justice case-law, which should be used to clarify the scope for including environmental and/or social criteria in the award of a contract.

Social criteria shall be linked to the subject matter of the contract which means that they must be objective and bring added value to the choice of the work, supply and service.

Recital 46 states that contracting authorities **may use criteria aimed at meeting social requirements in response to the needs of particularly disadvantaged groups of people to which those receiving/using the**



works, supplies or services which are the object of the contract belong.

Disabled people constitute around 10% of the population. This means that most supplies, services, and works will be used by a person with disabilities.

Belgium has already included **social and ethical criteria** in the corresponding article on the award criteria of its procurement legislation, as have a number of regions. Without explicit reference in national or regional legislation to social and ethical criteria, it will be very difficult for contracting authorities to apply such criteria.

Recommendations

15. It is extremely important that the Belgian example is followed and that social and ethical criteria are included in all national and regional public procurement legislation. Without explicit reference in national or regional legislation to social and ethical criteria, it will be very difficult for contracting authorities to apply such criteria.
16. It would be helpful to have a list of examples to clarify what is meant by social considerations. The examples could be identical to those identified for performance of contracts.
17. In order to ensure that accessibility and other 'social considerations', such as employment of people with disabilities, are considered as award criteria, we recommend that a **link** is made between provisions on award criteria and provisions on technical specifications.

III.5 Supported employment workplaces

Content

Article 19 allows public authorities **to reserve tenders for supported employment workplaces.** (*Article 19, recital 28, and Annex VIIa*).

This will give contracting authorities the scope to support employment opportunities for disabled people through sheltered or supported employment.

Sheltered workshops and/or sheltered employment programmes where most of the employees are disabled and cannot work under normal conditions can benefit from the provisions of the article.

Recital 28 also specifies that **public authorities may request companies who win a bid to perform their contract in the context of a sheltered employment contract.**

If a public authority decides to reserve a tender to sheltered workshops on sheltered employment programmes, it must specify this in the contract notices.

There is in fact no direct awarding to specific companies. On the contrary, supported employment companies from across the EU must be able to compete for a tender. A supported company from Belgium could compete for a contract in the UK or in Poland for instance.

Recommendations

18. It is important to ensure that the legislative framework adopted at national level enables and encourages public authorities to make use of the possibility to reserve tenders for supported employment. There are different ways to achieve this:

National legislation can contain provisions obliging contracting authorities who reach a certain number of contracts per year to reserve a percentage of their public tenders to supported employment companies.

Another option would be to establish a threshold in terms of overall budget to be devoted to tendering for companies employing a majority of disabled persons.

A system combining the two (percentage of overall number of contracts, and amount thresholds) would also be possible.

Summary of Recommendations⁵

National and Regional Public Procurement Legislation should include:

Main provisions

- 1 **Explicit transposition** of Directive framework provisions in national legislation.
- 2 **Obligatory** rather than optional **requirements** such as accessibility criteria in national or regional rules.
- 3 **Certification** or a **national registry** with quality labels to ensure companies' compliance with accessibility provisions, non discrimination legislation and employment quotas.

Technical specifications

4. **Obligatory accessibility requirements** with exceptions limited to precise cases. (Article 23, Annex VI, Recital 46)
5. **Definitions of accessibility and design for all criteria** for people with disabilities. (Recital 29)
6. **References** to existing national or regional legislation that imposes **accessibility obligations**.
7. **Procedure for verifying** the ability of a tenderer to perform the contract (with regard to accessibility requirements). (Article 48)

Contract performance conditions

⁵ References to provisions in Directive 2004/18/EC

8. Possibility to include **employment of disabled people** in contract performance conditions. (Article 26, Recital 33)
9. **Non-exhaustive list of social considerations** as well as **guidelines** on the use of social considerations by contracting authorities. (Article 26, Recital 33)
10. Measures for promoting employment or training for people with disabilities in the **definition of possible social considerations**. (Article 26, Recital 33)
11. **A system of control** whereby companies are requested to provide proof of employment or training provided.

Employment rights, conditions and protection

12. **Obligation** for public authorities to ask companies to indicate in tendering documents how they have **taken into account key legislation** in the area of employment for people with disabilities. (Article 27)
13. **Obligation** for companies to provide **proof of compliance** in countries where legislation on **employment quotas** is in place. (Article 27)
14. **Obligation** for public authorities to **request copies of action plans or measures** developed by a company to ensure **equal treatment** of candidates and employees. (Article 27)

Award of contracts

15. **Social and ethical criteria** included in all national and regional public procurement legislation. (Article 53, Recital 1, Recital 46)
16. **A list of examples** to explicitly clarify what is meant by **social considerations**. (Article 53, Recital 1, Recital 46)
17. A **link** between **provisions on award criteria** and **provisions on technical specifications** to ensure that accessibility and other 'social considerations' are considered as **award criteria**. (Article 53, Recital 46, Article 23)

Supported employment

18. **Legislative frameworks** that enable and encourage public authorities to make use of the possibility to **reserve tenders** for supported employment. (Article 19, Recital 28, Annex VIIa)

ANNEX I

Excerpts from relevant articles in the Directives⁶

> Technical Specifications or requirements to be included in tenders

Recital 29 (Recital 42)

(...)

Contracting authorities should, whenever possible, lay down technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users. **The technical specifications should be clearly indicated, so that all tenderers know what the requirements established by the contracting authority cover.**”

Article 23 (Article 34)

Technical specifications

1. The technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. **Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.**

(...)

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

(a) either by reference to technical specifications defined in Annex VI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when these do not exist - to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words "or equivalent";
(b) or in terms of performance or functional requirements; the latter may include environmental characteristics. (...)

⁶ Numbering and excerpts of text are from Articles in Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Numbering of Articles from Directive 2004/17/EC relating to energy, water, and transport are referred to in parentheses.

ANNEX VI (Annex XXI)

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive: (a) "technical specification", in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, **design for all requirements (including accessibility for disabled persons)** and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all 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;

(b) "technical specification", in the case of public supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, **environmental performance levels, design for all requirements (including accessibility for disabled persons)** and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;
(...)

> Conditions for the performance of a contract

Recital 33 (Recital 44)

Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, **mention may be made**, amongst

other things, **of the requirements - applicable during performance of the contract - to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions**, assuming that such provisions have not been implemented in national law, **and to recruit more handicapped persons than are required under national legislation.**

Article 26 (Article 38)

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract **may, in particular, concern social and environmental considerations.**

> Employment and Environmental Rights, conditions and protections

Recital 34 (Recital 45)

The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (11) lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Recital 43 (Recital 54)

(...)

Non-observance of national provisions implementing the Council Directives 2000/78/EC and 76/207/EEC concerning equal treatment of workers, which has been the subject of a final judgment or a decision having equivalent effect may be considered an offence concerning the professional conduct of the economic operator concerned or grave misconduct.

Article 27 (Article 39)

Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

1. A contracting authority may state in the contract documents, or be obliged by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to ... employment protection provisions and to the working conditions which are in force in the Member State, region or locality in which the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

2. A contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the works are to be carried out or the service is to be provided. The first subparagraph shall be without prejudice to the application of the provisions of Article 55 concerning the examination of abnormally low tenders.

Article 48

Technical and/or professional ability

1. The technical and/or professional abilities of the economic operators shall be assessed and examined in accordance with paragraphs 2 and 3.
2. Evidence of the economic operators' technical abilities may be furnished by one

or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

(...)

Article 52

Official lists of approved economic operators and certification by bodies established under public or private law

1. Member States may introduce either official lists of approved contractors, suppliers or service providers or certification by certification bodies established in public or private law (...)

> Criteria for awarding Contracts

Recital 1 (Recital 1)

(...) This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, **including in the environmental and/or social area**, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles mentioned in recital 2.

Recital 46 (Recital 55)

Contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition..... **a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs - defined in the specifications of the contract - of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.**

(...)

Where the contracting authorities choose to award a contract to the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money. In order to do this, they shall determine the economic and quality criteria which, taken as a whole, must make it possible to determine the most economically advantageous tender for the contracting authority. The determination of these criteria depends on the object of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the object of the contract, **as defined in the technical specifications** and the value for money of each tender to be measured.

In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract.

Article 53 (Article 55)

Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

(a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or

(b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a) the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread

Where, in the opinion of the contracting authority, weighting is not possible for demonstrable reasons, the contracting authority shall indicate in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance

> Supported employment workplaces

Recital 28 (Recital 39)

Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute to integration in society. In this context, sheltered workshops and sheltered employment programmes contribute efficiently towards the integration or reintegration of people with disabilities in the labour market. However, such workshops might not be able to obtain contracts under normal conditions of competition. Consequently, it is appropriate to provide that Member States may reserve the right to participate in award procedures for public contracts to such workshops **or reserve performance of contracts to the context of sheltered employment programmes**

Article 19 (Article 28)

Reserved contracts

Member States may reserve the right to participate in public contract award procedures **to sheltered workshops or** provide for such contracts to be performed in the context of **sheltered employment programmes where most of the employees concerned are handicapped persons** who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

The contract notice shall make reference to this provision.

ANNEX VII A (Annex XVIII)

INFORMATION WHICH MUST BE INCLUDED IN PUBLIC CONTRACT NOTICES

Open and restricted procedures, competitive dialogues, procedures, negotiated procedures:

(...)

2. Where appropriate, **indicate whether the public contract is restricted to**



sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.



ANNEX II

List of authorities responsible for implementation in THE Member States

Austria:

Federal Ministry for Economic Affairs (Bundesministerium für wirtschaftliche Angelegenheiten)
Stubenring 2
1011 Wien
Tel: +43 1 711000
Fax: +43 1 713 80 14

Belgium:

Ministère Economie, PME, Classes Moyennes Energie
Chancellerie du Premier Ministre, 16 rue de la Loi, 1000 Brussels (tel. 501 02 11 or 501 04 17).

Cyprus :

Treasury of the Republic of Cyprus
Mr Kountouris, skountouris@treasury.gov.cy
Tel. +357 22 602 265

Czech Republic:

Mr. Jan Krofta
Department of public investment - Ministry for regional development
e-mail: krojan@mmr.cz
phone: ++420234154305

Mr. David Dvořák
Department of European and international law - Ministry for regional development
e-mail: dvodav@mmr.cz
phone: ++420224861183

Denmark :

Ministry of Economic and Business Affairs
Slotsholmsgade 10-12
DK-1216 Copenhagen K
Fax: +45 33 12 37 78



Tel: +45 33 92 33 50
oem@oem.dk

Estonia:

Ministry of Finance
State Aid and Public Procurement Division
Aime Vosu, head of Division
Aime.vosu@fin.ee
Tel. +372 611 3215
Mr. Veisko Vase
Chief Specialist
Veiko.vaske@fin.ee
www.fin.ee
Tel. +372 611 3252
Fax +372 696 6810
1, Suur-Ameerika 15006 Tallinn

France :

Ministère de l'Economie, des finances et de l'industrie
6, rue Louise Weiss
75703 Paris Cedex 13
Tel: +33 1 4004 0404
Fax: +33 1 5318 9715

Finland :

Kauppa- ja teollisuusministeriö (Ministry of Trade and Industry),
Aleksanterinkatu 4 FIN-00170 Helsinki

Ministry for Foreign Affairs
Merikasarmi, Laivastokatu 22 A,
FIN-00160 Helsinki
PO Box 176, FIN-00161 HELSINKI, Finland

Tel: +358 9 1605 6306
Fax: +358 9 1605 5358
jari.vilen@formin.fi

Germany:

Bundesministerium für Wirtschaft und Technologie, Scharnhorststraße
36 D – 10115 Berlin Telephone 00 49 30 20 14 9
Telefax 00 49 30 20 14 10
e-mail poststelleza5info@bmwi.bund.de



internet <http://intranet.bmwi.ivbb.bund.de>

Greece:

Ministry for Economy and Finance
Nikis 5 -7, Athens
Tel: +30 10 3221511 / +30 10 3244924
Fax: +30 10 3332609
minister@mnec.gr

Ministry of Environment and Public Works (Department of Public Works) 182 Harilaou Trikoupi St, Athens

Hungary:

Ireland:

Ministry of Enterprise, Trade and Employment
Tel: +353 1631 2172
Fax: +353 1631 3265

Italy:

Ministero dei Lavori Pubblici, Piazza Porta Pia, Rome
Tel: 06 44121

Dipartimento per le Politiche comunitarie
Via del Giardino Teodoli, 66
00186 ROMA
Tel: +39 0667791
Fax: +39 0667795342

Latvia :

Mr. Edvins Parups, Deputy Head of the Procurement Supervision
Bureau of Latvia
Eksporta iela 6, Riga, LV-1010, Latvia
Edvins.Parups@fm.gov.lv
Tel. +371- 7326701



Lithuania:

Mrs Birute Maciunskiene
Ministry of Economy
b.maciunskiene@ukmin.lt
Tel +370 5 262 9696.

Luxembourg:

Ministère des Travaux Publics
L- 2940
Tel: +352 462709
Fax: +352 4783306
Annette.thill-stoffel@tp.etat.lu

Malta :

Mr. Dennis Attard: dennis.attard@gov.mt
Mr. Oreste Cassar: oreste.cassar@gov.mt

The Netherlands :

Ministerie van Economische Zaken
Bezuidenhoutseweg 30
2594 AV Den Haag
Postbus 20101
Tel: 070 379 89 11
Fax: 070 347 40 81

Poland:

Portugal:

Ministry of Equipment, Planning and Territorial Administration Rua
de São Mamede ao Caldas 21, 1100 Lisboa,
Tel: 01 886 1119, Fax: 01 886 7622

Ministry of Finance
Avenida Infante d. Henrique 1
1149-009 Lisboa
Tel: +351 21 881 68 00
Fax: +351 21 881 68 62
ministro@mf.gov.pt



Slovakia:

Slovenia:

Mr Andrej Dolinsek,
Head of Department for Public Procurement and Concessions
Ministry of Finance Trzaska 19a 1000 Ljubljana Slovenia
e-mail: andrej.dolinsek@gov.si

Spain:

Junta Consultiva de Contratación Administrativa Ministerio de
Economía y Hacienda
c/ Velazquez no 50, 29001 Madrid

Sweden:

Finansdepartement,
Regeringskansliet
103 33 Stockholm
Tel: + 46 8 405 16 17
Fax: + 46 8 10 64 12

United Kingdom:

HM Treasury, Procurement Policy, Allington Towers
19 Allington Street
London SW1E 5EB
Tel: 0171 270 1648, Fax: 0171 270 1653