



Technical Report

**Guidelines on the use of accessibility award criteria suitable for public procurement of ICT products and services in Europe**



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Reference

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## Foreword

This Technical Report (TR) has been produced by ETSI Technical Committee Human Factors (HF).

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## Introduction

The present document was prepared in response to Phase 2 of Mandate M 376 [i.21] from the European Commission to CEN, CENELEC and ETSI.

The primary objective of this Mandate was to produce a European Standard (EN 301 549 [i.19]), hereafter, for the purpose of the present document, called "the EN", that sets out in a single source, detailed practical and quantifiable functional accessibility requirements that take note of global initiatives in that field and which are applicable to all ICT products and services identified in Phase I and usable in public procurement.

The present document is one of the Technical Reports that supports the EN by giving guidance to procurers on the award criteria relevant to each area of user needs in the products and services under consideration.

A second Technical Report, (TR 101 550 [i.20]), lists the standards and technical specifications used in the creation of the compliance requirements for accessibility set out in the EN. It also provides a source reference for other documents needed to implement the test procedures required by the EN together with those testing methods necessary to implement them.

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# 1 Scope

The present document gives guidance to procurement authorities intending to purchase ICT products and services on the use of award criteria relevant to each area of user needs in the public procurement of ICT products and services. It particularly deals with those aspects of any contract that are related to the functional accessibility requirements of ICT products and services that are dealt with in EN 301 549 [i.19].

The guidance provided in the present document is based on the assumption that the accessibility requirements of EN 301 549 [i.19] are applicable to a given procurement situation. Possible exceptions to the application of the EN to public procurement (e.g. national security, maintenance, repair, or occasional monitoring) are dealt with in TR 101 550 [i.20].

Aspects of award criteria that do not deal with accessibility in public ICT procurement in Europe are outside the scope of the present document.

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# 2 References

References are either specific (identified by date of publication and/or edition number or version number) or non-specific. For specific references, only the cited version applies. For non-specific references, the latest version of the referenced document (including any amendments) applies.

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## 2.1 Normative references

The following referenced documents are necessary for the application of the present document.

Not applicable.

## 2.2 Informative references

The following referenced documents are not necessary for the application of the present document but they assist the user with regard to a particular subject area.

- [i.1] Case 31/87 "Gebroeders Beentjes BV V State of the Netherlands", 28 January 1987.
- [i.2] Case C-513/99 "Concordia bus Finland", Judgement of the court 17 September 2002.
- [i.3] Case C-448/01 "EVN AG and Wienstrom Gmbh v Republic of Austria".
- [i.4] Case C-532/06 "Emm. G. Lianakis AE and others v Dimos Alexandroupolis and others", 28 January 2008.
- [i.5] Commission Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L340/1 - 16.12.2002).
- [i.6] Commission Regulation (EC) No 2151/2003 of 16 December 2003 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) (OJ L 329/1 - 17.12.2003).
- [i.7] Commission Regulation (EC) No 1422/2007 of 4 December 2007 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts (OJ L 317/34 - 5.12.2007).

- [i.8] Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (L 185 - 16.08.71).
- [i.9] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (L 395/33 - 30.12.89).
- [i.10] Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (L 209/1 - 24.7.92).
- [i.11] Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (L 199/01 - 9.8.93).
- [i.12] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (L 199/54 - 9.8.93).
- [i.13] Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (L 199/84 - 9.8.93).
- [i.14] Directive 2004/17/EC of the 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 (L 134/1 - 30.4.2004).
- [i.15] Directive 2004/18/EC of the Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (L 134/114 - 30.4.2004).
- [i.16] Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (L 257/127 - 1.10.2005).
- [i.17] Commission Directive 2009/81/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (L 257/127 - 1.10.2005).
- [i.18] ETSI EG 201 013: "Human Factors (HF); Definitions, abbreviations and symbols".
- [i.19] CEN/CENELEC/ETSI EN 301 549: "Accessibility requirements suitable for public procurement of ICT products and services in Europe".
- [i.20] CEN/CENELEC/ETSI TR 101 550: "Documents relevant to EN 301 549 "Accessibility requirements suitable for public procurement of ICT products and services in Europe".
- [i.21] European Commission "M/376 Standardisation Mandate to CEN, CENELEC and ETSI in support of European accessibility requirements for public procurement of products and services in the ICT domain".

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## 3 Definitions and abbreviations

### 3.1 Definitions

For the purposes of the present document, the terms and definitions given in EG 201 013 [i.18] and the following apply:

**award criteria:** criteria by which the award of a contract is judged

**contracting authority:** state, regional or local authorities, bodies governed by public law, or associations of such bodies

**economic operator:** contractor, supplier or a service provider

**open procedures:** those procedures whereby any interested economic operator may submit a tender

**public contract:** contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities

**restricted procedure:** procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender

**selection criteria:** criteria by which the eligibility or ability of a contractor is judged

## 3.2 Abbreviations

For the purposes of the present document, the following abbreviations apply:

CPV	Common Procurement Vocabulary
EFTA	European Free Trade Association
ICT	Information and Communication Technology
MEAT	Most Economically Advantageous Tender
TED	Tenders Electronic Daily

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## 4 Accessibility requirements

When procuring ICT through an invitation to tender, it is necessary to provide a technical specification "*defining the required characteristics of the ICT products and services sought, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product ---- testing and test methods ---- and conformity assessment procedures*" (from Directive 2004/17 [i.7]).

The present document deals particularly with the accessibility requirements set out in the technical specification in order to ensure that the procured ICT can be used in an effective manner by the widest possible number of users and to prevent discrimination against an important section of the community. It describes how various accessibility characteristics in differing offers may be assessed so as to determine the most accessible product or service.

To assist in this aim, the requirements in EN 301 549 [i.19] have been chosen to address the most important ICT design parameters that risk unintentionally creating barriers to use for people who have some limitations in their physical or sensory abilities (e.g. limited vision, limited hearing, or limited ability to move limbs). The use of EN 301 549 [i.19] is intended to provide a level of assurance that the procured ICT will be usable by the widest range of potential users, including persons with disabilities.

EN 301 549 [i.19] contains a comprehensive approach to ICT accessibility. It is written in such a way that it can be applied to any ICT and enable any supplier to demonstrate how each ICT product and service that they supply satisfies the accessibility needs of users by enabling people to locate, identify and operate ICT functions, and to access the information provided, regardless of physical, cognitive or sensory ability.

The requirements in EN 301 549 [i.19] are related to three factors:

- the abilities of users, and limitation to those abilities;
- the aspects of user interfaces/user interaction that rely on those abilities;
- the alternative media and modalities that users need in the context of ICT usage.

The underlying capabilities and features of the ICT only appear in EN 301 549 [i.19] in terms of some clustering of requirements related to broad functionally specific categories such as "ICT with two way voice communication". Even ICT within these broad functional categories still has to meet various other requirements that are not related to that type of functionality (e.g. if the ICT has a screen it also has to meet the same requirements as other ICT with screens). Where ICT is purchased for a specific individual, that ICT may only need to provide support for the particular needs of that individual.

Accessibility relates to the avoidance of, or removal of, barriers to access that prevent a person from making use of the capabilities and features of ICT. It therefore mainly relates to products and services that deal with the means of access to those capabilities and features, namely the user interface/user interaction aspects of the ICT.

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## 5 The invitation to tender

### 5.1 General

When writing an invitation to tender there are a number of legal requirements and aspects of good practice that need to be observed. These are generally outside the scope of the present document but some points are important to consider. Examples of the more important legislation controlling public procurement of ICT are set out in Annex A.

It should be noted that tenders with a value estimated to be below a specified threshold are not covered by the procurement Directives, and so it is for Member States to decide whether such contracts should be subject to national rules. These thresholds were originally specified in Article 7 of Directive 2004/18/EC [i.15], and are now regularly updated by regulation.

Article 40 of Directive 2004/18/EC [i.15] sets out various rules which cover the information to be provided in the invitation to tender. In particular it states that "*the information shall include a copy of the specifications or of the descriptive document and any supporting document*"---and--- "*the relative weightings of the criteria for the award of the contract or, where appropriate, the descending order of importance of such criteria if they are not given in either the contract notice, the specifications or the descriptive document*".

### 5.2 Technical specification

#### 5.2.1 Content

The technical specification forms the basis of the invitation to tender and provides a core set of requirements relating to the procurement. There is nothing however to prevent the technical specification from describing other desirable features that can assist when assessing the award criteria. When procuring ICT the procurement authority will be most concerned to ensure that the ICT has a set of capabilities and features that enable it to successfully meet the core purposes for which it is being procured. These capabilities and features will be the focus of most of the technical requirements included in the technical specification for the ICT.

Some simple examples of capabilities and features that the technical specification might be focussed around are:

- For a photocopier - the form (free-standing or desktop mounted), the size, the range of copying functions, the paper-handling capacity, the maintenance arrangements, etc.
- For an office e-mail, calendar, contacts and document storage system - the number of people that can use the system, connectivity to the outside world, the amount of document storage space, the supplier support offered, etc.
- For a public access system for a regional library service - the range of alternative access methods provided (e.g. web access from home, access from terminals in public places, access from terminals within libraries), the speed of response to public enquiries, the size of library catalogue that can be handled, the range of different loan items that can be handled, etc.

In addition to this core set of technical requirements, in order to avoid discrimination, it is necessary for the technical specification to have requirements intended to assure accessibility to all users. Which aspects of accessibility are most important might vary dependant on the needs of a particular procurement authority. For example, an authority purchasing for individuals with specific disabilities, such as pupils at a blind school, might put particular stress on those aspects of accessibility dealing with visual disability.

#### 5.2.2 Over-specification

Many of the requirements that will appear in the technical specifications for these ICT procurements will cluster around the core set of capabilities and features that the procurement authority believe are of most importance for its purposes.

To avoid making the tender anticompetitive, it is important not to specify mandatory requirements in such detail so as to prevent reasonable competition by the provision of differing features or implementations. None of the examples of core capabilities and features given in the examples cited in clause 5.1 relate to how an end-user of any ICT products and services make use of these core capabilities and features. End-users will only be able to control functionality and access or create information by means of some form of user interface technologies.

It is appropriate for procurement authorities to specify functions instead of technologies. Unless a referred standard contains a specific requirement for a particular type of user interface and user interaction techniques (which is not the general case) it would be unnecessary, and probably unwise, to add any accessibility requirement into the technical specification that pre-suppose the use of any particular user interface.

Thus, most procurement authorities would generally consider it inadvisable to specify details of any type of user interface, such as requiring:

- the photocopier to have a touch-screen interface;
- the office e-mail, calendar, contacts and document storage system to use an integrated multi-window interface;
- the access to a public library system terminal to be via a keyboard and screen interface.

Most procurement authorities would understand that specification of the details of this type would be inadvisable, as a single solution is not seen as being essential and specifying one solution would be seen as discouraging innovation from suppliers.

The inclusion of any accessibility requirement that can only be met when a particular user interface is used would, unintentionally, be requiring the supplier to provide such a user interface in order to meet it. This will thus require all suppliers to provide such a user interface even though the procurement authority did not originally set out to explicitly require this.

The inclusion of a single carelessly detailed accessibility requirement could thus be anti-competitive by excluding all suppliers who do not provide a type of user interface that makes it possible to conform to that requirement. It could therefore have the result that a supplier who provides an alternative type of user interface that has very high levels of accessibility, would be excluded from the selection process.

There are two factors that counterbalance the damaging effects suggested above. In the first instance, a supplier who does not provide a user interface to which the requirement relates would often be able to claim that they have not failed to meet the requirement because the requirements in EN 301 549 [i.19] contain sufficient scoping text within them to make it clear when the requirement is not applicable. This is clarified by a note in Annex C of EN 301 549 [i.19] that makes it clear that "compliance is achieved" when a requirement is not applicable. In the second instance, the supplier could claim that they have met the underlying purpose of the requirement via different means (often referred to as "equivalent facilitation").

### 5.2.3 Competition

As described in Annex VI of Directive 2004/18/EC [i.15], a technical specification comprises the totality of the technical prescriptions set out in the tender documents which define the items or services required by the contract.

The preamble to the Directive [i.15] states that "*technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to a European standard, or in the absence thereof, to national standards, tenders offering equivalent arrangements must be considered by contracting authorities.*"

### 5.2.4 Specification options

Thus, to permit competition, Article 23 of the Directive [i.15] allows a number of "mix and match" options in the technical specifications and states that they "*shall be formulated:*

- (a) *either by reference to technical specifications defined in Annex VI* [of the Directive and to other standards and technical approvals which are listed in order of preference]. Each reference is required to be accompanied by the words 'or equivalent';

- (b) *"or in terms of performance or functional requirements;*
- (c) *or in terms of performance or functional requirements with reference to the specifications mentioned in subparagraph (a) above as a means of presuming conformity with such performance or functional requirements;*
- (d) *or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in sub-paragraph (b) for other characteristics."*

It is generally recommended that Option (b) is followed. This approach usually allows greater scope for market creativity and can challenge the market to develop innovative solutions better suited to their needs. If the procurement authority opts for this approach it does not need to go into too much detail in the technical specification. In the case of ICT it would be sufficient to specify in the purchasing specification that the supplier should describe how their product or service meets the relevant user accessibility needs set out in clause 4.2 of the EN. These user accessibility needs are simply described in functional terms as functional performance statements. This approach leaves the potential supplier to describe the manner in which these needs have been met in his compliance statement.

As the options offered as solutions to this functional performance based approach can vary considerably it is important that the contracting authority should make sure that its specifications are clear enough to make a proper and justifiable evaluation of the offered product or service. Otherwise, this could lead to the difficulty that without specified tests, the compliance is not clearly demonstrable and could cause problems at the contract award stage.

If option (a) is used, the technical specification would state simply that "the product or service being procured shall meet a specified standard for the required type of product or another published standard". The "other standards" which can be referred to are International, European or National standards that are approved by an international standards organisation, and with which compliance is not compulsory.

For the accessibility part of the technical specification it is assumed that EN 301 549 [i.19] would be referenced. But if the specification simply states that the product or service should meet EN 301 549 [i.19], it is likely to lead to problems in the procurement process. Requiring suppliers to meet all of the requirements in the EN as the single accessibility requirement would lead to very few potential suppliers being able to meet all of those requirements.

In the case of using option (a), this could lead to a situation where the majority of potential suppliers are discouraged from bidding and from increasing the accessibility of their own ICT products and services. For some years it can be expected that not all potential suppliers would be able to make a fully compliant offer. If only one supplier can meet all of the requirements then that supplier would have to be awarded the contract. Most procurement authorities would prefer to see a number of suppliers being able to make offers to supply.

In practice there may be no supplier that is able to provide a product or service that is 100 % compliant and therefore the contract award process, whilst allowing for the possibility of 100 % conformance, should also provide for the assumption that there are likely to be some failures to meet accessibility requirements and therefore should encourage the accurate reporting of such inadequacies.

The EN is effectively an example of option (c) which expresses in functional terms in clause 4.2, a set of user needs that are of importance for people with a range of possible impairments, and then stating that "*ICT meeting the applicable requirements of clauses 5 to 13 is deemed to have met a level of accessibility conformant with the present document and consistent with the needs identified in clause 4.2*" (referring to clause numbers in the EN). Clauses 5 to 13 of the EN are set out in fully testable form.

This approach permits a technical specification to state that "*clause 4.2 of the EN shall be met*" and allows the tenderer to state how the specified needs have been satisfied, either by meeting (or exceeding) the requirements set out in clauses 5 to 13, or by other methods described in the response. For example, a supplier could describe existing installations of the ICT where there have been no accessibility issues, or they could report user tests which have shown that the necessary level of accessibility has been reached.

The use of option "d" requires the procurement authority to have considerable technical knowledge of the relative importance of the various characteristics being dealt with. This can lead to difficulties when preparing a request for tender.

## 5.2.5 Compliance

For any procurement, where that part of the technical specification that deals with accessibility states that "*the functional performance statements set out in clause 4.2 of the EN shall be met*", a supplier could be asked to identify how the user needs expressed in these high-level functional performance statements are met for each ICT entity that they supply. This can be demonstrated in three ways:

- 1) They can declare that they have met the user needs expressed in the functional performance statements and provide the necessary additional evidence to support this claim. This evidence could include the results of user trials, evidence from previous installations of similar ICT, or any other evidence that the supplier believes supports their assertion.
- 2) They can declare that they have met all of the applicable testable requirements that appear in clauses 5 to 13 of the EN. These requirements specify a minimum, but testable, set of requirements that support the functional performance statements. ICT that meets these requirements is deemed to have met a level of accessibility consistent with the functional performance statements that describe the user needs.
- 3) They can declare how many of the testable requirements which appear in clauses 5 to 13 of the EN they have met. If they have not fully met all of the testable requirements, they can provide additional evidence to show how they have fully met the user needs that are addressed by the testable requirements that they have not met.

Where the part of the technical specification dealing with accessibility specifies which of the functional performance statements set out in clause 4.2 of the EN "*shall be met*", if they do not claim and demonstrate that they have met all the user needs expressed in the relevant high-level functional performance statements, then they would be considered not to have fully met the accessibility requirements of the technical specification.

By default, a procurement authority would specify that the supplier should show how they have met the user accessibility needs related to all of the functional performance statements listed in clause 4.2 of the EN, as this would correspond to a full Design for All approach. However, a procurement authority could choose to omit a particular functional performance statement from the request for a supplier declaration if it is sure that such an omission will have no negative impact on meeting the accessibility needs of the intended users in the planned context of use.

If the supplier has not correctly followed one of the methods listed above they would be considered not to have met the accessibility requirements of the technical specification.

The supplier, in his statement of compliance can also point to those areas where the minimum requirements set out in the purchasing specification are exceeded or additional accessibility features are provided. Evaluation of any additional accessibility-related features provided by suppliers is a potential area for consideration for award criteria.

Putting the emphasis on the supplier to demonstrate how they achieve good levels of accessibility ensures that what they declare is directly relevant to the supplied ICT and does not relate to some speculative expectations from the procurement authority.

To assist the supplier to ensure that all aspects of the purchasing specification have been met, and to assist the procurement department in its evaluation process it could be of assistance for the technical specification to provide some sort of "tick box".

## 5.3 Criteria

### 5.3.1 Selection criteria

It is important to note the difference between selection and award criteria. Selection criteria apply to the tenderer and are used to assess their ability to perform the proposed contract. Award criteria relate to the tender and are used to identify the one that is the most economically advantageous.

The selection criteria are the criteria by which those economic operators qualified to submit tenders are judged. Directive 2004/18 [i.15] states that the "*contracting authorities shall --- set out in such a contract notice the personal, technical, economic and financial conditions to be fulfilled by candidates*" and also "*any necessary formalities for the assessment of the minimum economic and technical standards required of the economic operator.*"

The procurement authority is not permitted to use any of these criteria that concern the tenderer's suitability to perform the contract, as criteria on which the contract is awarded (as was set out in the Lianakis case [i.4]).

### 5.3.2 Award criteria

According to Directive 2004/18/EC [i.15], "*the criteria on which the contracting authorities shall base the award of public contracts shall be either*" the tender which is most economically advantageous (MEAT) from the point of view of the contracting authority, or solely on the basis of the lowest price. Which of these two criteria apply has to be set out publicly in the contract notice. Award criteria are only applicable in MEAT situations.

Article 53 of Directive 2004/18/EC [i.15] requires that the award criteria are linked to the subject matter of the contract in question, for example: quality, price, technical merit, aesthetic or functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance, delivery date and delivery period or period of completion. This list, which is set out in Article 53 of Directive 2004/18/EC [i.15], is not exhaustive. Other criteria have been used such as: innovation, acceptable level of risk and certain social considerations, including positive action towards persons with disabilities, the promotion of ethnic/racial diversity and also gender equality.

Accessibility award criteria are a particular case of award criteria. They are not set out as an example in Article 53 of Directive 2004/18/EC [i.15], but the requirement in Article 23 "*to take into account accessibility criteria for people with disabilities or design for all users*" makes it clear that such considerations are a valid subject for award criteria.

Directive 2004/18/EC [i.15] assumes that the chosen award criteria are publicly set out either in the original contract notice or in the invitation to tender. The Directive requires in Article 53 that the weighting for each criterion are disclosed together with the same information on any award sub-criteria. The weightings are required to be given either in order of ranking or preferably as an exact number, (e.g. quality 25 %) or alternatively as a meaningful range (e.g. quality 20 % - 30 %).

The quality of the compliance statement, setting out the manner in which the user accessibility needs have been met, can be judged with respect to the quality of the evidence provided to support any claims made in the compliance statement. These judgements can be used as a consideration for award criteria. Scores could be given for the breadth of sampling used in any testing, the method of testing used to support any claim, the rigorousness of the evaluation techniques, whether accessibility testing has been performed using real users and whether such testing was performed in the laboratory or in real usage.

For example, in a contract for the procurement of ICT for persons with disabilities, the award criteria may take into account requirements relating to specific needs of each category of user thus achieving personalisation of the service depending on the age, gender or social difficulties of the user. In a contract for the procurement of software or hardware, an award criterion may be included that relates to the number of points awarded for the specific accessibility feature for deaf or hard of hearing users, or for those with other particular disabilities noted in the functional performance statements.

According to Directive 2004/18/EC [i.15], all award criteria and sub-criteria are required to be set out in the official notice and/or in the contract documents. It is generally impossible to change or add any criteria at a later date. Extra points could be given at the evaluation stage for performance over and above that called for in the purchasing specification.

In those cases where the technical specification refers to a standard which does not call up the accessibility requirements of the EN, the award criteria could for example, refer to additional interoperability with assistive technology as giving extra points.

Some procedures for procuring products and services make it more difficult to decide award criteria related to accessibility. It is common for procurement bodies to seek to contract out the provision of products to a service provider who might be asked to provide ICT services to a Government department, so that any obligations for purchasing accessible products are also passed to that service provider, whilst still remaining the responsibility of the procurement authority. Such an invitation to tender might require that the service provider should assist the customer in complying with the relevant disability legislation by ensuring that all services, including all associated guidance and communications, are accessible and usable by persons with disabilities, including those requiring the use of assistive technology. This approach makes it difficult for a procurement authority to score the quality of the tender against any detailed product requirement.

## 6 Tender evaluation

When the tenders are received it is necessary to evaluate which supplier has made the most successful offer. This process of evaluation should be carried-out in a manner which is:

- properly recorded;
- non-discriminatory;
- transparent; and
- conforms to the evaluation scheme that was described in the original contract notice or in the invitation to tender.

In addition to listing the award criteria, the technical specification is required by Directive 2004/18/EC [i.15] to list the relative importance of the award criteria, preferably by giving a weighting to each of them. Thus for a given invitation to tender the weightings might be allocated, for example, on price, technical merit, running costs, after sales service and accessibility. Dependent on the needs of the procurement authority, the relative percentage for each of these criteria could differ widely. While overall accessibility is always important, when specific user needs are known, accessibility requirements related to those needs may acquire an even greater weighting.

Using this information the award criteria can then be scored in the evaluation process in a manner dependent on the wording of the contract. For example, on the assurance about how well the contractual criteria are met, or on the number of criteria which are met, in those situations where no supplier meets all of the criteria. Extra points can be awarded for those criteria where the minimum requirements are exceeded if such a possibility exists in the stated requirement.

Each of the award criteria might be subject to a number of sub-criteria, which in the case of accessibility could be the ability to meet each of the user needs set out in clause 4.2 of the EN. Each sub-criterion is required by Directive 2004/18/EC [i.15] to have its own score, which will be a proportional part of the applicable criteria weighting. Where the procurer wishes to give greater weighting to certain user needs or to certain subsets of requirements in clauses 5 to 13, this can be reflected in the weighting of the sub-criteria.

The Directives or Regulation do not outline marking schemes or scoring methodologies to be used in evaluating bids. A marking scheme may provide an evaluation methodology for bids against the allocated weightings. It may be necessary for the procurement authority to provide a note outlining the marking scheme, scoring methodology, and how these will be used in determining successful bids.

An evaluation score is needed to evaluate the offer in any Most Economically Advantageous Tender (MEAT). One example of a marking scheme for sub-criteria might be:

Score	Criteria for awarding score
0	Completely fails to meet required criterion or does not provide a required feature
1	Proposal significantly fails to meet the criteria required, contains significant shortcomings and/or is incompatible with other features
2	Proposal falls short of achieving required criteria in a number of identifiable respects
3	Proposal meets the required criteria in most material aspects, but is lacking or inconsistent in others
4	Proposal meets the required criteria in all material respects
5	Proposal meets the required criteria in all material respects and exceeds some or all of the core requirements

It would be expected that the score achieved in each criteria would be adjusted by its applicable sub-criteria weighting to achieve an overall weighted score.

If this model is used, a bidder meeting all of the criteria in full will only score 4 out of 5 (80 %) for each assessed requirement. By allowing a fifth mark (20 %) for added value, some scope is left for the bidder to improve on the technical specification and demonstrate the extra quality of the offer. In these cases the invitation to tender should make clear that bidders can not only meet the technical specification but exceed it if they are to obtain the maximum score. The procurement authority may wish to give some guidance on the added benefits it has in mind so as not to award extra points for something it does not need.

There are various methods of deriving a total score on which to judge the quality of a tender. This simple linear scoring method of adding up the individual scores can have limitations, particularly when the sub criteria are allocated low marks, and bids which differ widely cannot have a significant effect on the overall evaluation of the bid. It is recommended that the evaluation process is carried out by a suitably briefed and qualified team. All bidder responses need to be treated in a confidential manner, ensuring that all paperwork from bidders and the evaluation materials are kept secure. In order to deal satisfactorily with any challenges subsequent to the contract, it is important to ensure that there is an adequate audit trail throughout the evaluation process.

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## Annex A: Relevant European legislation

### A.1 Directives

#### A.1.1 General

The two main Directives dealing with public procurement are Directive 2004/17/EC [i.7] coordinating the procurement procedures in entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC [i.15] on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Both of these Directives were produced in response to the Green Paper "Exploring the way forward" which was adopted by the Commission in November 1996 and also to Court of Justice case law on earlier Directives, particularly to the Concordia judgement on Directive 98/38 [i.2] and to other case law on award criteria such as Beentjes [i.1] on Directive 71/305 [i.8], Lianakis [i.4] on Directive 92/50 [i.10], and Wienstrom [i.3] on both Directive 93/36 [i.11] and Directive 89/665 [i.9].

#### A.1.2 Directive 2004/17/EC

Directive 2004/17/EC [i.7], "coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors", completely repeals Directive 93/38/EC [i.13]. Unlike this earlier Directive, Directive 2004/17/EC [i.7] is not applicable to contracts awarded by contracting entities operating in the telecommunications sector as sufficient competition was considered to exist in this area and "as set out in paragraph (5) of the preamble to the Directive, and thus it is no longer necessary to regulate purchases by entities operating in this sector".

Article 34 of this Directive requires technical specifications or standards to be set out in the contract documentation and also that whenever possible, these specifications "should be defined so as to take into account accessibility criteria for people with disabilities or design for all users."

When tendering, the supplier is required to prove to the satisfaction of the contracting entity and by any appropriate means that the product, service or work in compliance with the standard meets the performance or functional requirements of the contracting entity.

Where the criterion for the award of the contract is that of the most economically advantageous tender, Article 36 states that it is possible to take into account variants which are submitted by a tenderer and which meet the minimum requirements specified.

Article 31 states that differing Articles are applicable to different groups of product identified by their CPV codes.

Article 41 requires that product area of interest "*shall be established by the contracting entities by reference to the CPV nomenclature*".

Article 54 deals with supplier selection criteria and Article 55 deals with contract award criteria.

#### A.1.3 Directive 2004/18/EC

Directive 2004/18/EC [i.15], procedures for the award of public works contracts, public supply contracts and public service contracts, repeals all of Directive 92/50/EC [i.10] except for Article 41 (on replacing Art 1 of Directive 89/665/EEC [i.9]). It also repeals Directives 93/36 [i.11] and 93/37 [i.12].

Article 7 of this Directive sets out the financial thresholds above which the Directive applies for various types of contract and which apply to telecommunications services with certain CPV codes (covering TV and Broadcast, interconnection services, and integrated telecommunications services).

Article 23 of this Directive requires technical specifications (which are defined in Annex VI) to be set out in the contract documentation and states that "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".

Article 23 gives guidance on the content of the technical specifications which "*shall be formulated*":

- (a) either by reference to technical specifications defined in Annex VI and to other standards and technical approvals which are listed in order of preference. Each reference is required to be accompanied by the words 'or equivalent';
- (b) or in terms of performance or functional requirements;
- (c) or in terms of performance or functional requirements but using the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;
- (d) or by referring to the specifications mentioned in subparagraph (a) for some characteristics, and the performance or functional requirements for others.

Annex VI describes the difference between "technical specifications", which are the totality of the technical prescriptions set out in the tender documents which define the items or services required by the contract, and "standards", which are specifications approved by an international standards organisation, compliance with which is not compulsory and which are International, European or National standards.

Article 35, on the notices to be given, requires that for a supply contract, product area of the contract will be established to the contracting authorities by reference to the CPV nomenclature.

Section II of the Directive details the criteria for qualitative selection of the suppliers. It deals with the probity of suppliers, their membership of professional or trade registers, their technical or professional ability, their adherence to quality assurance standards, their adherence to environmental management standards and official lists of approved suppliers.

Article 53 deals with contract award criteria. It requires that awards of contract will be either to the tender most economically advantageous (MEAT) or to the one offering the lowest price. When MEAT is used, the various criteria will be linked to subject matter of the contract in question and gives examples such as quality, price, technical merit, aesthetic or functional characteristics among others.

It also requires that the contracting authority will specify the relative weighting which it gives to each of the criteria, which can be expressed by providing for a range with a maximum spread. Where weighting is demonstrably not possible, it is permissible to rate the criteria in descending order of importance.

#### A.1.4 Directive 2005/51/EC

This Directive makes minor amendments both to Directive 2004/17/EC [i.7] and to Directive 2004/18/EC [i.15] by amending Annexes which deal with the provision of information.

#### A.1.5 Directive 2009/81/EC

Directive 2009/81/EC [i.17] deals with procurement in the realms of defence and security and sets special rules for confidentiality and the handling of classified information.

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## A.2 Regulation

Commission Regulation (EC) No 1177/2009 amends Directives 2004/17/EC [i.7], 2004/18/EC [i.15] and 2009/81/EC [i.17] by updating the limits for the financial thresholds applying to various types of contracts.

## A.3 Common Procurement Vocabulary (CPV)

### A.3.1 CPV Structure

Products and services that are procured in Europe are classified in accordance with the Common Procurement Vocabulary (CPV) that is set out in Commission Regulation (EC) No 2151/2003 [i.6] which amends Commission Regulation (EC) No 2195/2002 [i.5]. These codes are published on the EU's public procurement portal SIMAP (<http://simap.europa.eu/>). The Regulation standardizes public procurement throughout the European Community by using a single classification system, which uses the same description for goods and the same corresponding alphanumeric code.

This aims to make it possible to overcome language barriers in the harmonization of procurement procedures throughout the European Community and to make the whole process more transparent.

All public contracts are required to indicate the CPV codes to which they refer. Within Europe, according to the Directive 2004/18/EC [i.15], all purchases of ICT products and services above a certain total net value are required to reference the appropriate CPV codes. This financial limit is subject to a regular review based upon the value of the Euro, and currently stands at 133 000 €[i.7].

The CPV consists of a main vocabulary for defining the subject of a contract, and a supplementary vocabulary for adding further qualitative information. The main vocabulary is based on a tree structure comprising codes of up to 9 digits (an 8 digit code plus a check digit) associated with a wording that describes the type of supplies, works or services forming the subject of the contract. There is no publicly available description of the detailed structure, but it can be deduced from the examples given.

The first two digits identify the divisions (xx000000-y), e.g.:

- 30000000-9 is Office and computing machinery, equipment and supplies.

The first three digits identify the groups (xxx00000-y), e.g.:

- 30100000-0 is Office machinery, equipment and supplies except computers; and
- 30200000-1 is Computer equipment and supplies.

The first four digits identify the classes (xxxx0000-y), e.g.:

- 30210000-4 is Data-processing machines (hardware); and
- 30230000-0 is Computer related equipment.

The first five digits identify the categories (xxxxx000-y), e.g.:

- 30231000-7 is Computer screens and consoles; and
- 30232000-5 is Peripheral equipment.

Finally, each of the last three digits gives a greater degree of precision within each category and the ninth digit is a verification digit.

### A.3.2 Relevant CPV codes

All of the public contracts awarded in all the Member States and EFTA countries and listed in Tenders Electronic Daily (TED) since 2004 were reviewed during phase 1 of the work and those that deal with the following broad categories were identified:

- Office and computing machinery, equipment and supplies (CPV code: 30000000-9).
- Electrical machinery, apparatus, equipment and consumables (CPV code: 31000000-6).
- Radio, television, communication, telecommunication and related equipment and apparatus (CPV code: 32000000-6).

The main CPV categories that are related to ICT services and support were noted as being:

- 50960000-2: Installation Services of computers and Office Equipment.
- 50961000-9: Installation service of computers and information processing equipment.
- 50961110-3: Hardware installation services.
- 72253000-3: Helpdesk and Support services.
- 72253200-5: System Support Services.
- 72254000-0: Software testing and maintenance services.
- 72254100-1: System Testing services.

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## A.4 Contract Award procedures

The two main Directives dealing with public procurement are Directive 2004/17/EC [i.14] coordinating the procurement procedures in entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC [i.15] on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The details of these and other relevant legislation are set out above.

When considering an invitation to tender there are four types of permitted award procedures: open, restricted, negotiated and competitive dialogue.

### A.4.1 The open procedure

An open procedure is one where an authority invites providers to bid directly for a contract in response to a public invitation to tender. All interested contractors are permitted to submit tenders and the winning provider is selected from those bidding.

### A.4.2 The restricted procedure

This is a two-stage procedure where bidders express an interest following publication of a contract notice, but only those invited by the authority after a screening process are allowed to submit tenders. The first stage of the process is the selection of suitable bidders. The second stage is the evaluation of the tenders.

### A.4.3 The negotiated procedure

The negotiated procedure is an exceptional procedure that may only be used in certain defined cases, which are set out in Articles 30 and 31 of Directive 2004/18/EC [i.15]. In a negotiated procedure, the contracting authorities consult the suppliers of their choice and negotiate the terms of contract with one or more of the suppliers.

### A.4.4 The competitive dialogue procedure

In the case of particularly complex contracts, it is permitted that where procurement bodies consider that open or restricted procedures will not allow the award of the contract the competitive dialogue procedure may be used. In this procedure, following pre-qualification, the procurement authority discusses the possible form of the contract and the technical specification with at least three bidders before issuing the tender. When the procurement authority considers that a proposed solution meets its requirements, the dialogue ends and the bidders submit tenders based on the solution achieved.

Other procedures are permitted if the value of the contract is estimated to be below the threshold amount for public contracts set out in Article 7 of Directive 2004/18/EC [i.15].

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## History

<b>Document history</b>		
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