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Subject: Proposal for a Directive of the European Parliament and of the Council on public procurement  
- Cluster 4: E-procurement

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Delegations will find in the Annex a non-paper prepared by the Commission services (DG Internal Market) on Cluster 4 of the above proposal.

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## Cluster 4

### E-procurement

Changes to the substance are highlighted in **bold**; minor modifications or purely linguistic adaptations are not highlighted.

NB! Other aspects that are relevant to e-procurement, are covered under **cluster 3**: reducing documentation requirements (**e-Certis; European Procurement Passport**) and **cluster 6**: aggregation of demand (**Dynamic Purchasing Systems, Central Purchasing Bodies**).

#### 1. Electronic communication

##### *Article 19*

##### *Rules applicable to communication*

*[Directive 2004/18/EC: Art. 41, 71 and 79(2)(g)]*

While the fundamental provisions have stayed unchanged, this Article, which is central to the promotion of e-procurement, has nevertheless undergone several significant changes, not least in respect of the obligatory use of electronic means of communication and the mechanisms aimed at solving cross-border accessibility and inter-operability issues.

1. Except where use of electronic means is mandatory pursuant to Articles 32, 33, **34, 35(4), 49(2)** or 51 of this Directive, contracting authorities may choose between the following means of communication for all communication and information exchange:
  - (a) electronic means in accordance with paragraphs 3, 4 and 5;
  - (b) post or fax;
  - (c) telephone in the cases and circumstances referred to in paragraph 6;
  - (d) a combination of those means.

**Member States may make mandatory the use of electronic means of communication in other situations than those provided for in Articles 32, 33, 34, 35(2), 49(2) or 51 of this Directive.**

The current provisions of Article 42 limit themselves to stipulating that the choice of means of communications to be used lies with "the contracting authority". As there was some doubt about this, it is therefore important to state explicitly that Member States may impose use of electronic means of communications, either in all cases in which the Directive has not already rendered such use obligatory or in some of them. To underline the importance of electronic means of communications, these are now placed at the beginning of the list of the allowable means of communications.

2. The means of communication chosen must be generally available and not restrict economic operators' access to the procurement procedure.

In all communication, exchange and storage of information, contracting authorities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved. They shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

3. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure. The technical details and characteristics of the devices for the electronic receipts to be deemed in compliance with the first subparagraph of this paragraph are set out in Annex IV.

The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the technical details and characteristics set out in Annex IV due to technical developments or administrative reasons.

This corresponds to the current provision of Art. 79(2)(g): "The Commission may amend the following: ... the technical details and characteristics of the devices for electronic receipt referred to in points (a), (f) and (g) of Annex X.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 77(3). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 77(5)."

**To ensure the interoperability of technical formats as well as of process and messaging standards, especially in a cross-border context, the Commission shall be empowered to adopt delegated acts in accordance with Article 89 to establish the mandatory use of specific technical standards, at least with regard to the use of e-submission, electronic catalogues and means for electronic authentication.**

Differing technical formats or process and messaging standards have the potential to create obstacles to interoperability, not only within the individual country but also and especially between different Member States. Some examples:

For example, each time they participate in a procurement procedure in which use of e-catalogues is permitted or required, economic operators have to customise their own catalogues, providing very similar information in different formats depending on the specifications of the individual contracting authority concerned. Standardising the catalogue format would not only avoid (possible) problems of interoperability, but would also - and perhaps above all, reduce their effort and generate efficiencies. Similarly, if a standard format for the transmission of tendering documents (setting common protocols for how and what to transmit) were created in the future and gained sufficient recognition or support across the EU, this could be imposed as a messaging standard.

As the technical development is too rapid to be catered for by using the ordinary legislative procedure for these important but non-essential parts, it is important to be able to ensure the application of common technical specifications by means of delegated acts.

**4. Contracting authorities may, where necessary, require the use of tools which are not generally available, provided that they offer alternative means of access.**

**Contracting authorities shall be deemed to offer suitable alternative means of access in any of the following situations:**

**(a) They offer unrestricted and full direct access by electronic means to these tools from the date of publication of the notice in accordance with Annex IX or from the date when the invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest shall specify the internet address at which these tools are accessible;**

- (b) ensure that tenderers established in other Member States than the contracting authority's may access the procurement procedure through the use of provisional tokens made available online at no extra cost;**
- (c) support an alternative channel for electronic submission of tenders.**

The main rule in respect of means of communications is set out in paragraph 3, that is, that these must be generally available. However, paragraph 4 provides for the possibility, where necessary, to use other means of communication that are **not** commonly available to potential bidders. In such cases, the contracting authority must actively ensure that the absence of general availability of the chosen means of communication will not create an insurmountable barrier for participation, by offering access either to the chosen means of communication or by allowing other ways of communication. Thus, the provision does not aim at removing existing systems, which in some Member States are sophisticated and have been developed at cost/effort to meet a specific national infrastructure, nor does it aim to force re-engineering of these systems.

If the problem is due to a particular tool, one solution is to make it down-loadable (point a; similar to sites presenting e.g. documents requiring the use of Adobe Flash and accompanied by a link to download that software); if it is the provision of a particular piece of information (a registration number or similar) it may be possible to provide a dummy reference (point b). Another example of the provisional token referred to under point b might be a dummy signature created under the specific communications tool of the contracting authority in question. If the contracting authority does not (or, at times, cannot, e. g. because of licensing issues or similar) offer a solution under points a or b, then it needs in any case to find ways to permit submission via an alternative channel (point c). Such an alternative channel might, for instance, consist in providing for uploading of the tendering documents from the web.

All three methods are aimed at ensuring the same thing: namely that - one way or the other - the mechanism chosen by the contracting authority to receive electronic tenders does not block bidders from submitting their tenders, also where the contracting authority requires use of tools that are not generally available.

5. The following rules shall apply to devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:

- (a) information on specifications for the electronic submission of tenders and requests to participate, including encryption **and time-stamping**, shall be available to interested parties;

Time-stamping is the electronic equivalent of the "postal stamp" which establishes the exact, legally relevant time of transmission of documents. The reference to time-stamping has been added because of the importance of being able to establish with a sufficient degree of certainty that communications provided by electronic means comply with any applicable deadlines.

- (b) devices, **methods for authentication and electronic signatures** shall comply with the requirements of Annex IV;
- (c) **contracting authorities shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure; the level shall be proportionate to the risks attached;**

The issue here is one of proportionality between on the one hand the requirements aimed at ensuring correct and reliable identification of the senders of the communication concerned as well as the integrity of its content (that is, checking that it is not altered) and on the other hand the risk of problems in case of e.g. messages that are sent by a different sender than the one indicated.

Obviously, the level of security required of an email requesting confirmation of the exact address at which an information meeting will be held (for instance in connection with preliminary market consultations pursuant to Article 39) needs not be set at the same levels as for the tender itself which constitutes a binding offer for the economic operator.

Applying such a "risk assessment" approach to security levels for electronic communications is used elsewhere in Union legislation, see e. g. Article 1 of Commission Decision 2009/767/EC referred to in point d.

- (d) where advanced Electronic Signatures as defined by Directive 1999/93/EC of the European Parliament and of the Council<sup>1</sup> are required, contracting authorities shall, as long as the signature is valid, accept signatures supported by a qualified electronic certificate referred to in the Trusted List provided for in the Commission Decision 2009/767/EC<sup>2</sup>, created with or without a secure signature creation device, subject to compliance with the following conditions:**
- (i) they must establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU<sup>3</sup> and put in place necessary measures to be able to process these formats technically;**
  - (ii) where a tender is signed with the support of a qualified certificate that is included in the Trusted list, they must not apply additional requirements that may hinder the use of those signatures by tenderers.**

This provision on the one hand recognises that advanced electronic signatures may be required (provided, of course, that this is justified by the risk assessment under point c), on the other hand, it sets out what amounts to a system of mutual recognition of electronic signatures through references to well-established legislative acts in the internal market.

6. The following rules shall apply to the transmission of requests to participate:
- (a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone; in the latter case, a written confirmation must be sent before expiry of the time limit set for their receipt;
  - (b) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof.

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<sup>1</sup> OJ L 13, 19.1.2000, p. 12.

<sup>2</sup> OJ L 274, 20.10.2009, p. 36.

<sup>3</sup> OJ L 53, 26.2.2011, p. 66.

For the purposes of point (b), the contracting authority shall indicate in the contract notice **or in the invitation to confirm interest** that it requires requests to participate made by fax to be confirmed by post or by electronic means and the time limit for sending such confirmation.

- 7. Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.**

**This obligation shall not apply where the use of electronic means would require specialised tools or file formats that are not generally available in all the Member States within the meaning of paragraph 3. It is the responsibility of the contracting authorities using other means of communication for submission of tenders to demonstrate in the procurement documents that the use of electronic means, due to the particular nature of the information to be exchanged with the economic operators, would require specialised tools or file formats that are not generally available in all the Member States.**

**Contracting authorities shall be deemed to have legitimate reasons not to request electronic means of communication in the submission process in the following cases:**

- (a) the description of the technical specifications, due to the specialised nature of the procurement, cannot be rendered using file formats that are generally supported by commonly used applications;**
- (b) the applications supporting file formats that are suitable for the description of the technical specifications are under a proprietary licensing schema and cannot be made available for downloading or remote use by the contracting authority;**
- (c) the applications supporting file formats that are suitable for the description of the technical specifications use file formats that cannot be handled by any other open or downloadable applications.**



This provision is a key element of the general policy to promote e-procurement, as it generalises the obligation (already applicable to central purchasing bodies as of the deadline for implementation of the Directive set out in Article 92(1)) to exclusively use electronic means of communications for all procurement procedures under the Directive. It is important to stress that this applies to communication at all stages of the procedure, including in particular the transmission of the tenders (e-submission). It is, however, equally important to underline that it does not oblige contracting authorities to carry out electronic processing of tenders, e.g. it does not mandate electronic evaluation or automatic processing. No elements of the public procurement process after the award of the contract are covered by this obligation to use electronic means of communication i.e. it does entail obligations of electronic invoicing or payments.

It is also important to stress that the provision does provide for exceptions from the obligation to use electronic means of communication. Examples of situations in which contracting authorities are deemed to justified could for instance be where tenders are required to be accompanied by complex technical drawings or architectural plans established by means of cad/cam (computer assisted design/manufacture) soft-wares (in fact, such plans or drawings could pose a mix of problems of both a legal and a technical/practical nature: the necessary software might be proprietary, the files might simply be too big for ordinary communication programmes to handle and/or contracting authorities might not have the facilities to print them with the necessary high resolution ... .)

**8. Contracting authorities may use the data processed electronically for public procurement procedures in order to prevent, detect and correct errors occurring at each stage by developing appropriate tools.**

This provision could, for instance, allow a contracting authority to set up an electronic "quality control system", for instance to detect and correct draft calls for competition with too short deadlines.

**ANNEX IV**  
**REQUIREMENTS RELATING TO DEVICES FOR THE ELECTRONIC RECEIPT OF**  
**TENDERS, REQUESTS FOR PARTICIPATION AND PLANS AND PROJECTS IN**  
**CONTESTS**

*[Directive 2004/18/EC: Annex X]*

Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
- (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- (c) where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
- (d) only authorised persons may set or change the dates for opening data received;
- (e) during the different stages of the procurement procedure or of the contest access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
- (f) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
- (g) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith, and
- (h) authentication of tenders must conform to the requirements set out in this Annex.**

In a draft prepared prior to the adoption of the proposal by the Commission the provisions on authentication were set out in this annex. When they were transferred to Article 19, point (h) should have been eliminated.

## 2. Electronic availability of procurement documents

### *Article 51*

#### *Electronic availability of procurement documents [Directive 2004/18/EC: Art. 38(6), 39(2)]*

1. Contracting authorities **shall** offer unrestricted and full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 **or the date on which the invitation to confirm interest is sent**. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.

The current Directive provides that deadlines for the receipt of tenders may be shortened by 5 days where contracting authorities have **voluntarily** offered unrestricted and full direct access to the procurement documents from the beginning of the procedure. In line with the general policy of promoting e-procurement it is now rendered obligatory to do so and this has been accompanied by a corresponding, general shortening of deadlines (as examined in cluster 1).

2. Provided that it has been requested in good time, the contracting authorities or competent departments shall supply additional information relating to the specifications and any supporting documents not later than six days before the deadline fixed for the receipt of tenders. **In the event of an accelerated procedure as referred to in Articles 25(3) and 26(5), that period shall be four days.**

The current Directive does not provide for a special deadline for the transmission of additional information in case of accelerated restricted or negotiated procedures. However, also in view of the introduction of the new accelerated open procedure, it is important to set a shorter deadline for accelerated procedures than the one applicable in "normal" procedures.

### **3. Electronic auctions**

*Article 33*  
*Electronic auctions*  
*[Directive 2004/18/EC: Art. 1(7), Art. 54]*

The main elements of this provision have remained unaltered as to substance, most of the (relatively few) changes being a streamlining of the provision (e. g. through the incorporation of the definition directly in the Article itself or by placing the detailed information requirements in Annex VII). Other changes are the consequences of changes elsewhere in the proposal, e. g. the new possibility to use a prior information notice to call for competition (paragraphs 4 and 6) or changing the award criterion "the lowest price" to that of "the lowest cost" (paragraph 3).

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

As part of the overall "toolbox"-approach and to promote e-procurement, the faculty for Member States to decide whether or not contracting authorities may have recourse to electronic auctions has been eliminated.

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

2. In open, restricted or **competitive procedures with negotiation**, the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

The possibility of using electronic auctions in the context of competitive procedures with negotiations has been enlarged to all cases in which this procedure may be used compared to the current situation which limits this possibility to the case provided for under Article 30(1)(a) - irregular or unacceptable tenders.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in Article 31(4)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 32.

3. The electronic auction shall be based on one of the the following criteria:
  - (a) solely on prices where the contract is awarded to the tender offering the **lowest cost**;
  - (b) on prices and/or on the new values of the features of the tenders indicated in the specifications where the contract is awarded to the most economically advantageous tender.
4. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice **or in the invitation to confirm interest. The specifications shall include at least the information set out in Annex VII.**
5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

**A tender shall be considered admissible where it has been submitted by a qualified tenderer and is in conformity with the technical specifications.**

The current Directive refers to "admissible" tenders without, however, clarifying what the notions covers.

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

6. Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).

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

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

7. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment and they may, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announcing the number of participants in any specific phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.
8. Contracting authorities shall close an electronic auction in one or more of the following manners:
  - (a) at the **previously** indicated date and time;
  - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have **previously** stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
  - (c) when the **previously** indicated number of phases in the auction has been completed.

The current Directive specifies that this information must necessarily be set out in the invitation to take part in the auction; as a simplification measure this proposal focuses on the essential of when the information is given, not on the detail of where to set it out.

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

9. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 66 on the basis of the results of the electronic auction.

The current provision of Art. 54(8), second subparagraph ("Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as put up for tender in the published contract notice and defined in the specification.") has been deleted as part of the overall effort to streamline and simplify the proposal. The necessary safeguards continue to apply through the generally applicable provisions and principles of the Directive (in particular concerning equal treatment and transparency) and the new provisions of Article 15, second subparagraph.

**ANNEX VII**  
**INFORMATION TO BE INCLUDED IN THE SPECIFICATIONS IN ELECTRONIC**  
**AUCTIONS**  
**(Article 33(4))**

*[Directive 2004/18/EC: Art. 54(3), ((a) to (f))]*

The specifications to be used where contracting authorities have decided to hold an electronic auction shall include at least the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

#### **4. Electronic catalogues**

*Article 34*  
*Electronic catalogues*  
*[New]*

Directive 2004/18/EC limits itself to a passing reference to electronic catalogues in Recital 12<sup>4</sup>. As part of the overall policy of promoting e-procurement this proposal explicitly set outs the provisions governing the use of this electronic procurement tool. Essentially, electronic catalogues are a format for the presentation and organisation of information in a manner that is common to all the participating bidders and which lends itself to electronic treatment.

- 1. Where contracting authorities require the use of electronic means of communication pursuant to Article 19, they may require tenders to be presented in the format of an electronic catalogue.**

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

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

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

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<sup>4</sup> ("... a tender submitted by a tenderer, in particular where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used, may take the form of that tenderer's electronic catalogue if the latter uses the means of communication chosen by the contracting authority in accordance with Article 42.")



Use of electronic catalogues for the presentation of tenders does thus not mean that economic operators may limit themselves to the transmission of their general catalogue, they still have to adapt these in view of the specific procurement procedure. This ensures that the catalogue that is transmitted in response to a given procurement procedure only contains products, works or services that the economic operators estimated - after an active examination - correspond to the requirements of the contracting authority. Obviously, economic operators may copy information contained in their "general" catalogue, but they may not submit the general catalogue as such.

**Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authority in accordance with Article 19.**

- 3. Where the presentation of tenders in the form of electronic catalogues is accepted or required, contracting authorities shall:**
  - (a) state so in the contract notice or in the invitation to confirm interest where a prior information notice is used as a means of calling for competition;**
  - (b) indicate in the specifications all the necessary information pursuant to Article 19(5) concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.**
  
- 4. Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues. In such case, contracting authorities shall use one of the following alternative methods:**
  - (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;**
  - (b) notify tenderers that they intend to collect from the catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question (hereinafter ‘punch out’); provided that the use of this method has been announced in the procurement documents for the framework agreement.**

This provision concerns multiple framework agreements in which reopening of competition is foreseen and in which the initial tenders, on the basis of which the framework agreement itself was concluded, took the form of electronic catalogues. Paragraph 4 provides for two alternative methods for reopening the competition: either the economic operators themselves resubmit adapted electronic catalogues or the contracting authority plays an active role in preparing the tenders for the specific contracts. The latter case - the so-called "punch out" is regulated and commented on in paragraph 5.

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

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

**Before awarding the contract, contracting authorities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm the correctness of the tender thus constituted.**

Giving the economic operator the opportunity to contest or explicitly accept the tender that has been put together by the contracting authority on the basis of information contained in the economic operator's electronic catalogue is of course crucial since it will become binding on the economic operator in case the specific contract is awarded to him on that basis.

**6. Contracting authorities may award contracts based on a dynamic purchasing system through a punch out provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. This catalogue shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of a punch out. The punch out shall be conducted in conformity with point (b) of paragraph 4 and paragraph 5.**

Given that Article 32 on dynamic purchasing systems no longer provides for the "indicative tenders", it is necessary to set up special provisions to enable contracting authorities who so wish to use punch outs. The main purpose is to guarantee that contracting authorities start to collect the information needed to constitute the tender for a specific contract only on the basis of information originally supplied by the economic operators themselves in the required format.

It goes without saying that contracting authorities are not obliged to rely on punch outs in order to use electronic catalogues in the context of dynamic purchasing systems. In conformity with paragraph 3, they may also indicate that, for the specific contracts based on the system, presentation of tenders in the form of electronic catalogues is accepted or required.