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to:	Working Party on Public Procurement
on:	24 April 2012
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Subject:	Proposal for a Directive of the European Parliament and of the Council on public procurement - Cluster 1: Flexibilisation of procedures

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In view of the Working Party on Public Procurement on 24 April 2012, delegations will find in the Annex a working document on Cluster 1 submitted by the Presidency.

Changes to doc. 6059/12 and to doc. 7456/12 are underlined.

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Cluster 1

Flexibilisation of procedures

*Article 24*

*Choice of procedures*

*[Directive 2004/18/EC: Art. 28, 30(1)]*

[Remark: Except for a few editorial adjustments marked below, Article 24(1) and the revised Recitals 15, 15a and 15b are **unchanged** to substance as compared to the texts distributed by document 7456/12 of 16 March 2012.]

1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.
  - 1 a. Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.
  - 1 b. Member States may provide that contracting authorities may apply innovation partnerships as regulated in this Directive.
  - 1 c. Member States may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in the following situations:
    - a) with regard to works, supplies or services fulfilling one of the following criteria:
      - i) where the needs of the contracting authority cannot be met without adaptation of readily available solutions
      - ii) they include design or innovative solutions

- iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them
  - iv) the technical specifications [...] cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, Common Technical Specification or technical reference within the meaning of points 2 to 5 of Annex VIII
- b) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities need not publish a contract notice where they include in the [...] procedure all of, and only, the tenderers which satisfy the criteria set out in Article 55 to 63 and which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the procurement procedure;

#### Modified recital 15

There is a great need for contracting authorities to have additional flexibility to choose a procurement procedure, which provides for negotiations. The Agreement, which allows for negotiation in all procedures is illustrative in this regard. A greater use of these procedures is also likely to increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders. Member States should be able to provide for the use of the competitive procedure with negotiation or the competitive dialogue, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes.

Recital 15 a)

For works contracts, such situations include works that are not standard buildings or where works includes design or innovative solution. For services or supplies that require adaptation or design efforts, the use of a competitive procedure with negotiation or competitive dialogue is likely to be of value. Such adaptation or design efforts are particularly necessary in the case of complex purchases such as sophisticated products, services of intellectual services or major ICT projects. In these cases, negotiations may be necessary to guarantee that the supply or service in question corresponds to the needs of the contracting authority. In respect of off-the shelf services or supplies that can be provided by many different operators on the market, the competitive procedure with negotiation and competitive dialogue should not be used.

Recital 15 b)

The competitive procedure with negotiation should also be available in cases where an open or restricted procedure resulted only in irregular or unacceptable tenders. In particular tenders which do not comply with the procurement documents, which were received late, which are the outcome of collusion or which have been found by the contracting authority to be abnormally low, should be considered irregular. In particular tenders submitted by tenderers that do not have the requisite qualification, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure should be considered unacceptable.

2. The call for competition shall be made by a contract notice pursuant to Article 47.

Where the contract is awarded by restricted or competitive procedure with negotiation by a sub-central contracting authority, Member States may, 1<sup>st</sup> subparagraph notwithstanding, provide that the call for competition may be made by means of a prior information notice pursuant to Article 46(2). They may also reserve this possibility to specific categories of sub-central contracting authorities.

Where the call for competition is made by means of a prior information notice pursuant to Article 46(2), economic operators having expressed their interest following the publication of the prior information notice shall subsequently be invited to confirm their interest in writing by means of an ‘invitation to confirm interest’ in conformity with Article 52.

3. In the specific cases and circumstances referred to expressly in Article 30, Member States may provide that contracting authorities may apply a negotiated procedure without prior publication. Member States shall not allow the use of this procedure in any other cases than those referred to in Article 30.

New recital 14a

14a In order to make procedures faster and more efficient, time limits for participation in procurement procedures should be kept as short as possible without creating undue barriers to access for economic operators from across the Internal Market and in particular SMEs. The use of electronic means of information and communication, in particular full electronic availability of procurement documents and electronic transmission of communications leads to increased transparency and time savings. Therefore, provision should be made for reducing the minimum periods in line with the rules set by the Agreement and subject to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Furthermore, contracting authorities should have the opportunity to further shorten the time limits for receipt of requests to participate and of tenders in cases where a state of urgency renders the regular time limits impracticable, but does not make a regular procedure with publication impossible. [...] Only in exceptional situations where extreme urgency brought about by events unforeseeable by the contracting authority concerned that are not attributable to that contracting authority [...] makes it impossible to conduct a regular procedure even with shortened time limits, contracting authorities should, insofar as strictly necessary, have the possibility to award contracts by negotiated procedure without prior publication. This may be case where natural catastrophes require immediate action.

[...]

[\* Recital 19 dealt with under cluster 4 – no longer pertinent here.]

*Article 25*

*Open procedure*

*[Directive 2004/18/EC: Art. 38(2)(4)(8); Art. 1(11)(a)]*

1. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent.

The tender shall be accompanied by the [...] information for qualitative selection that is requested by the contracting authority.

2. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 15 days, provided that all of the following conditions are fulfilled:
  - (a) the prior information notice [...] included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information was available at the time the prior information notice was published;
  - (b) the prior information notice was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.
3. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limit laid down in the second subparagraph of paragraph 1, they may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent.
4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 where it accepts that tenders may be submitted by electronic means in accordance with Article 19(3), (4) and (5).

*Article 26*

*Restricted procedure*

*[Directive 2004/18/EC: Art. 38(3)(4)(8); Art. 1(11)(b)]*

1. In restricted procedures any economic operator may submit a request to participate in response to a call for competition by providing the [...] information for qualitative selection that is requested by the contracting authority.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

2. Only those economic operators invited by the contracting authority following its assessment of the [...] information provided may submit a tender. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

The minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender is sent.

3. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to 10 days, provided that all of the following conditions are fulfilled:
  - (a) the prior information notice [...] included all the information required for the contract notice in section I of part B of Annex VI, insofar as that information was available at the time the prior information notice was published;
  - (b) the prior information notice was sent for publication between 45 days and 12 months before the date on which the contract notice was sent.

4. Member States may provide that all or specific categories of sub-central contracting authorities may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, provided that all candidates have the same time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the contracting authority shall fix a time limit which shall be at least 10 days from the date of the invitation to tender.
5. The time limit for receipt of tenders provided for in paragraph 2 may be reduced by five days where the contracting authority accepts that tenders may be submitted by electronic means in conformity with Article 19(3), (4) and (5).
6. Where a state of urgency duly substantiated by the contracting authorities renders impracticable the time limits laid down in this Article, they may fix:
  - (a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent;
  - (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date on which the invitation to tender was sent.

*\*[Provision listed in Article 2 under cluster 10, but relevant also in this context:]*

- (15) 'procurement document' means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

*[\*Additional remark: this may entail that changes could be necessary across clusters. To be verified.]*



*Article 27*

*Competitive procedure with negotiation*

*[Directive 2004/18/EC: Art. 30(2)(3)(4); Art. 1(11)(d)]*

Add new recital 15c:

The competitive procedure with negotiations should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. In particular, contracting authorities should indicate beforehand the minimum requirements which characterise the nature of the procurement and which may not be changed in the negotiations. Award criteria and their weighting should remain stable throughout the entire procedure and not be subject to negotiations, in order to guarantee equal treatment of all economic operators. Negotiations should aim at improving the tenders so as to allow contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. Negotiations may concern all characteristics of the purchased works, supplies and services insofar as they do not constitute minimum requirements, including, for instance, quality, quantities, commercial clauses as well as social, environmental and innovative aspects. To ensure transparency of the process, all stages of the negotiation should be duly documented in conformity with the 2<sup>nd</sup> subparagraph of Article 85, so that contracting authorities can provide proof in writing, on request of one of the candidates or tenderers, that they have ensured equal treatment between all economic operators concerned.. In particular, it is essential that such oral communications with tenderers which could have an impact on the content and assessment of the tenders be documented to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication. Furthermore, to ensure transparency of the process, all tenders throughout the procedure are to be submitted in writing.

1. In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition containing the information set out in Annex VI parts B or C as the case may be by providing the [...] information for qualitative selection that is requested by the contracting authority. In the procurement documents, contracting authorities shall indicate which elements thereof define the minimum requirements to be met and which elements may be subject to negotiation. The indications shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation was sent. Article 26 (3) to (6) shall apply.

2. Only those economic operators invited by the contracting authority following its assessment of the [...] information provided may submit an [...] initial tender which shall be the basis for the subsequent negotiations. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.
3. Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders within the meaning of paragraph 6, to improve the content thereof so that the tenders better fulfil the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document.

[\* Add in Article 19 a clarification that negotiations may include oral communication, the main conclusions of which shall be set out in writing. Text to be included in revised cluster 4 document.]

The minimum requirements and the award criteria shall not be subject to negotiations.

[...]

Contracting authorities may award contracts on the basis of the initial tenders without negotiation where they have indicated in the contract notice, the invitation to confirm interest or in another procurement document, that they reserve the possibility to do so.

4. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, are informed in writing of any changes to the technical specifications other than those setting out the minimum requirements, in adequate time to allow such tenderers to modify and re-submit amended tenders following these changes, as appropriate.

In accordance with Article 18, contracting authorities shall not reveal to the other participants [...] confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific [...] information.

5. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document. In the contract notice, the invitation to confirm interest or in another procurement document, the contracting authority shall indicate whether it will use this option.
6. Where the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. It shall assess the final tenders [...] on the basis of the initially indicated award criteria and award the contract in accordance with Articles 66 to 69.

*Article 28*

*Competitive dialogue*

*[2004/18/EC: Recital 31, Art. 1(11)(c), Art. 29, Art. 38(3) and (5)]*

1. In competitive dialogues, any economic operator may request to participate.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was sent.

Only those economic operators invited by the contracting authority following the assessment of the [...] information provided may participate in the dialogue. Contracting authorities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).

2. Contracting authorities shall set out their needs and requirements in the contract notice and they shall define these needs and requirements in that notice and/or in a descriptive document. At the same time and in the same documents, they shall also set out and define the chosen award criteria.
3. Contracting authorities shall open, with the participants selected in accordance with the relevant provisions of Articles 54 to 65, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen participants during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all participants. To that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

In accordance with Article 18, contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a participant in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific [...] information.

4. Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria defined in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use this option.
5. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.
6. Having declared that the dialogue is concluded and having so informed the remaining participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the project.

These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, variations in which are likely to distort competition or have a discriminatory effect.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.

Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

8. The contracting authorities may specify prizes or payments to the participants in the dialogue.

Revised Recital 17:

- (17) Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary ‘market-pull’, incentivising the development of an innovative solution without foreclosing the market. Research and innovation, including eco-innovation and social innovation, are among the main drivers of future growth and have been put at the centre of the Europe 2020 strategy for smart, sustainable and inclusive growth. Public authorities should make the best strategic use of public procurement to spur innovation. Buying innovative goods and services plays a key role in improving the efficiency and quality of public services while addressing major societal challenges. It contributes to achieving best value for public money as well as wider economic, environmental and societal benefits in terms of generating new ideas, translating them into innovative products and services and thus promoting sustainable economic growth. This directive should contribute to facilitating public procurement of innovation and help Member States in achieving the Innovation Union targets. A specific procurement procedure should therefore be provided for which allows contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided it can be delivered to agreed performance levels and costs. The partnership should be structured in such a way that it can provide the necessary ‘market-pull’, incentivising the development of an innovative solution without foreclosing the market. Contracting authorities should consequently not use innovation partnerships in such a way as to prevent, restrict or distort competition.

*Article 29*  
*Innovation partnership*  
*[new]*

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, the need for which cannot be met by solutions already available on the market, provided that they correspond to the agreed performance levels and costs. The contract setting up the innovation partnership shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).
2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, which may include the manufacturing of the supply, the provision of the services or the completion of the works. The partnership shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that the contracting authority has indicated in the procurement documents that and under which conditions it may make use of this possibility to terminate the partnership.
3. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the candidates' capacity in the field of research and development and of developing innovative solutions. They may limit the number of [...] candidates that they will invite to participate in the procedure in accordance with Article 64.

Only those economic operators invited by the contracting authority following its assessment of the [...] information provided may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by solutions already available on the market. [...]

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

[...]

#### *Article 30*

##### *Use of a negotiated procedure without prior publication*

*[Directive 2004/18/EC: Art. 31]*

1. In the specific cases and circumstances laid down in paragraphs (2) to (5), Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication. In any other cases, the use of this procedure is not allowed.
2. The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:
  - (a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.

[\* to be decided at a later stage in accordance with the changes in cluster 9]



A tender shall be considered not to be suitable where it is irrelevant to the contract, being incapable, without substantial changes, of meeting the contracting authority's needs as specified in the procurement documents [...].

[...]

(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights, including intellectual property rights;

[...]

The exceptions set out in points (ii) and (iii) only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable for the contracting authority, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

[...]

3. The negotiated procedure without prior publication may be foreseen for public supply contracts:
- (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this provision shall not include quantity production to establish commercial viability or to recover research and development costs;
  - (b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years;
  - (c) for supplies quoted and purchased on a commodity market;
  - (d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.
4. The negotiated procedure without prior publication may be foreseen for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

5. The negotiated procedure without prior publication may be foreseen for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply Article 4.

This procedure may be used only during the three years following the conclusion of the original contract.

#### Recital 18

In view of the detrimental effects on competition, negotiated procedures without prior publication of a contract notice should only be used in very exceptional circumstances. This exception should be limited to cases where publication is either not possible, for reasons of extreme urgency brought about by events unforeseeable for and not attributable to the contracting authority, or where it is clear from the outset that publication would not trigger more competition or better procurement outcomes, not least because there is objectively only one economic operator that can perform the contract. This is the case for works of art, where the identity of the artist intrinsically determines the unique character and value of the art object itself. Exclusivity can also arise from other reasons, but only situations of objective exclusivity can justify the use of the negotiated procedure without publication, where the situation of exclusivity has not been created by the contracting authority itself with a view to the future procurement procedure. Contracting authorities relying on this exception should provide reasons why there are no reasonable alternatives or substitutes such as using alternative distribution channels including outside the Member State of the contracting authority or considering functionally comparable works, supplies and services.

Where the situation of exclusivity is due to technical reasons, these should be rigorously defined and justified on a case-by-case basis. They could include, for instance, near technical impossibility for another economic operator to achieve the required performance or the necessity to use specific know-how, tools or means which only one economic operator has at its disposal. Technical reasons may also derive from specific interoperability requirements which must be fulfilled in order to ensure the functioning of the works, supplies or services to be procured.

Finally, a procurement procedure is not useful where supplies are purchased on a commodity market, including trading platforms for commodities such as agricultural goods, raw materials and energy exchanges, where the regulated and supervised multilateral trading structure naturally guarantees market prices.

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