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In view of the Working Party on Public Procurement on 3-4 May 2012, delegations will find in the Annex a compromise proposal on the above cluster prepared by the Presidency.

Changes compared to the previous text (5736/12) are underlined, deletions are marked [...].

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Cluster 3

Reducing documentation requirements

1. Selection and exclusion criteria

Article 54

General principles

[Directive 2004/18/EC: Art. 44(1)]

1. Contracts shall be awarded on the basis of [...] criteria laid down in accordance with Articles 66 to 69, provided that the following cumulative conditions are fulfilled:
 - (a) the tender complies with the requirements, conditions and criteria set out in the contract notice or the invitation to confirm interest and in the procurement documents, taking into account, where applicable, Article 43;
 - (b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority in accordance with Article 56 and, where applicable, the non-discriminatory rules and criteria referred to in Article 64.

- (1a) Where information or documentation submitted by economic operators in respect of the conditions set out in paragraph 1 is or appears to be incomplete, missing or erroneous, economic operators shall be given the opportunity to supplement, clarify or complete this information or documentation within an appropriate time limit set by the contracting authority.

Contracting authorities may also invite economic operators to correct manifest errors or complete missing information needed for the assessment of award criteria, provided that this possibility is applied in full respect of the principles of equal treatment and transparency.

2.[Cluster 2]
3. In open procedures, contracting authorities may decide to examine tenders before verifying the absence of grounds for exclusion and fulfilment of the selection criteria in accordance with subsection 1 of this section. [...] This may not lead to contracts being awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority.

Member States may exclude the use of the procedure in the first subparagraph for or restrict it to certain types of procurement or specific circumstances.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the entry into force of new international agreements or modification of existing international agreements.

Article 55

Exclusion grounds

[Directive 2004/18/EC: Art. 45(1),(2),(4)]

1. An economic operator that has been the subject of a conviction by final judgment of which the contracting authority is aware for one of the following reasons shall be excluded from participation in a procurement procedure:
 - (a) participation in a criminal organisation, as defined in Article 2 [...] of Council Framework Decision 2008/841/JHA¹;

¹ OJ L 300, 11.11.2008, p. 42.

- (b) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union² and Article 2(1) of Council Framework Decision 2003/568/JHA³ as well as corruption as defined in the national law of the contracting authority or the economic operator;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests⁴;
- (d) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA⁵ respectively, or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
- (e) money laundering and terrorist financing, as defined in Article 1 of Directive 2005/60/EC⁶.

The obligation to exclude an economic operator shall also apply where the conviction by final judgment has been rendered against a person who is member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

² OJ C 195, 25.6.1997, p. 1.

³ OJ L 192, 31.7.2003, p. 54.

⁴ OJ C 316, 27.11.1995, p. 48.

⁵ OJ L 164, 22.6.2002, p.3.

⁶ OJ L 309, 25.11.2005, p. 15.

2. An economic operator shall be excluded from participation in a procurement procedure where the contracting authority has actual knowledge that the economic operator has not fulfilled obligations relating to the payment of taxes or social security contributions and where this has been established by a decision having binding and definitive effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

2a. Member States may provide for a derogation from the mandatory exclusion provided for in paragraphs 1 and 2 for overriding requirements in the general interest.

Member States may also provide for a derogation from the mandatory exclusion provided in paragraph 2, where only minor amounts of taxes or social security contributions are unpaid.

3. Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:

(a) [Cluster 2]

(b) where the economic operator is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

(c) where the contracting authority can demonstrate by any means that the economic operator is guilty of other grave professional misconduct.

(d) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract performed by it or contracts of a similar nature having lead to early termination of that prior contract, damages or other comparable sanctions.

[...]

4. Any economic operator that is in one of the situations referred to in paragraphs 1, 2 and 3 may provide the contracting authority with evidence, so as to enable the contracting authority to assess whether the measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If the contracting authority considers the evidence as sufficient, it shall not exclude the economic operator concerned.

For this purpose, the economic operator shall prove that it has compensated or agreed to compensate any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct. Contracting authorities shall evaluate the measures taken by the economic operators taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority considers the measures to be insufficient, it shall state the reasons for its decision.

An economic operator which has been excluded by final judgment from participating in procurement procedures shall not be entitled to make use of the faculty provided under the present paragraph during the period of exclusion resulting from that judgment.

- 4a. Where the period of exclusion has not been set by the final judgment that period shall be set by the contracting authority and shall be commensurate with the seriousness of the criminal offence or misconduct. It shall not exceed five years from the date of the conviction by final judgment in the cases referred to in the first paragraph and three years from the date of the relevant event in the cases referred to in paragraph (2) and (3).

[...]

Recitals 43/44:

- (43) Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities should be given the possibility to exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights. Bearing in mind that the contracting authority will have to assume the possible consequences of an erroneous decision, contracting authorities should also remain free to consider that there has been grave professional misconduct, where, before a binding and definitive decision on the presence of mandatory exclusion grounds has been rendered, they can demonstrate by any means that the economic operator has violated those obligations. They should also be able to exclude candidates or tenderers whose performance in earlier public contracts awarded to it has shown major deficiencies with regard to substantive requirements, for instance failure to deliver or perform, significant shortcomings of the product or service delivered, making it unusable for the intended purpose, or misbehaviour that casts serious doubts as to the reliability of the economic operator.
- (44) Allowance should, however, be made for the possibility that economic operators may adopt compliance measures aimed at remedying the consequences of any criminal offences or misconduct and at effectively preventing further occurrences of the misbehaviour. These measures may consist in particular in personnel and organisation measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules. Where such measures offer sufficient guarantees, the economic operator in question should no longer be excluded on these grounds. Economic operators should have the possibility to request that contracting authorities examine the compliance measures taken with a view to possible admission to the procurement procedure.

Article 56

Selection criteria

[Directive 2004/18/EC: Art. 44(1),(2), 46, 47, 48]

1. Selection criteria may relate to:
 - (a) suitability to pursue the professional activity;
 - (b) economic and financial standing;
 - (c) technical and professional ability.

[...]

Contracting authorities may only impose criteria referred to in paragraphs 2, 3 and 4 of this Article on economic operators as requirements for participation. They shall limit any requirements to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be related and [...] proportionate to the subject-matter of the contract.

2. With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled on one of the professional or trade registers kept in their Member State of establishment, as described in Annex XII.

In procurement procedures for services, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

3. With regard to [...] economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract [...].

For that purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract or that the annual accounts show a minimum ratio between assets and liabilities. They may also require a minimum level of professional risk indemnity insurance.

[Cluster 5]

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement referred to in the second subparagraph shall be calculated on the basis of the expected maximum size of specific procurements to be awarded under the system.

4. With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator in question has conflicting interests which may negatively affect the performance of the contract.

In procurement procedures for [...] supplies requiring siting or installation work, [...] services or [...] works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

5. Contracting authorities shall indicate the required conditions of participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

Recital 31

Overly demanding requirements concerning economic and financial capacity frequently constitute an unjustified obstacle to the involvement of SMEs in public procurement. Contracting authorities should therefore not be allowed to set requirements for economic, financial and technical ability which clearly go beyond the necessary guarantees for proper performance of the contract. Capitalisation, cash flow, turnover, own funds and insurance coverage can be useful indicators for economic and financial capacity. It appears, however, that, with regard to turnover, which is one of the most frequently used criteria, the required levels are often considerably too high, jeopardizing SME access to public contracts. It is therefore necessary to limit turnover requirements to a maximum of three times the estimated contract value. In duly justified circumstances, it should, however, be possible to apply higher turnover requirements [...]. Such circumstances may relate to the high risks attached to the performance of the contract or the fact that its timely and correct performance is critical, for instance because it constitutes a necessary preliminary for the performance of other contracts.

ANNEX XII
REGISTERS⁷

The relevant professional and trade registers and corresponding declarations and certificates for each Member State are:

- in Belgium the "Registre du Commerce"/"Handelsregister", and, *in the case of service contracts*, the "Ordres professionnels/Beroepsorden";
- in Bulgaria, the "Търговски регистър";
- in the Czech Republic, the "obchodní rejstřík";
- in Denmark, the "Erhvervs[...]styrelsen";
- in Germany, the "Handelsregister", the "Handwerksrolle", and, *in the case of service contracts*, the "Vereinsregister", the "Partnerschaftsregister" and the "Mitgliedsverzeichnisse der Berufskammern der Länder";
- in Estonia, the "Registrite ja Infosüsteemide Keskus";
- in Ireland, the economic operator may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, where he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name;

⁷ For the purposes of Article 56(2), "professional or trade registers" means those listed in this Annex and, where changes have been made at national level, the registers which have replaced them.

- in Greece, the "Μητρώο Εργοληπτικών Επιχειρήσεων — ΜΕΕΠ" of the Ministry for Environment, Town and Country Planning and Public Works (Υ.ΠΕ.ΧΩ.Δ.Ε) *in respect of works contracts*; the "Βιοτεχνικό ή Εμπορικό ή Βιομηχανικό Επιμελητήριο" and the "Μητρώο Κατασκευαστών Αμυντικού Υλικού" *in the case of supplies contracts; in the case of service contracts*, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as referred to in Annex I, the professional register "Μητρώο Μελετητών" and the "Μητρώο Γραφείων Μελετών";
- in Spain, the "Registro Oficial de Licitadores y Empresas Clasificadas del Estado" *in respect of works and services contracts*, and, *in the case of supplies contracts*, the "Registro Mercantil" or, in the case of non-registered individuals, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question;
- in France, the "Registre du commerce et des sociétés" and the "Répertoire des métiers";
- in Italy, the "Registro della Camera di commercio, industria, agricoltura e artigianato"; *in the case of supplies and services contracts* also the "Registro delle commissioni provinciali per l'artigianato" or, in addition to the already mentioned registers, the "Consiglio nazionale degli ordini professionali" *in respect of services contracts*;
- in Cyprus, the contractor may be requested to provide a certificate from the "Council for the Registration and Audit of Civil Engineering and Building Contractors (Συμβούλιο Εγγραφής και Ελέγχου Εργοληπτών Οικοδομικών και Τεχνικών Έργων)" in accordance with the Registration and Audit of Civil Engineering and Building Contractors Law *in respect of works contracts; in the case of supplies and services contracts* the supplier or service provider may be requested to provide a certificate from the "Registrar of Companies and Official Receiver" (Εφορος Εταιρειών και Επίσημος Παραλήπτης) or, where this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name;

- in Latvia, the "Uzņēmumu reģistrs";
- in Lithuania, the "Juridinių asmenų registras";
- in Luxembourg, the "Registre aux firmes" and the "Rôle de la Chambre des métiers";
- in Hungary, the "Cégnyilvántartás", the "egyéni vállalkozók jegyzői nyilvántartása" and, *in the case of service contracts*, some "szakmai kamarák nyilvántartása" or, in the case of some activities, a certificate stating that the person concerned is authorised to be engaged in the commercial activity or profession in question;
- in Malta, the economic operator obtains his "numru ta' registrazzjoni tat-Taxxa tal-Valur Miżjud (VAT) u n-numru tal-licenzja ta' kummerc", and, in the case of a partnership or company, the relevant registration number as issued by the Malta Financial Services Authority;
- in the Netherlands, the "Handelsregister";
- in Austria, the "Firmenbuch", the "Gewerberegister", the "Mitgliederverzeichnisse der Landeskammern";
- in Poland, the "Krajowy Rejestr Sądowy";
- in Portugal, the "Instituto da Construção e do Imobiliário" (INCI) *in respect of works contracts*; the "Registro Nacional das Pessoas Colectivas" in the case of *supplies and services contracts*;
- in Romania, the "Registrul Comerțului";
- in Slovenia, the "Sodni register" and the "obrtni register";
- in Slovakia, the "Obchodný register";

- in Finland, the "Kaupparekisteri"/"Handelsregistret";
- in Sweden, the "aktiebolags-, handels- eller föreningsregistren";
- in the United Kingdom, the economic operator may be requested to provide a certificate from the Registrar of Companies stating that he is certified as incorporated or registered or, where he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in a specific place under a given business name.

2. Reliance on capacities of others

Article 62

Reliance on the capacities of other entities

[Directive 2004/18/EC: Art. 47(2), 47(3), 48(3), 48(4)]

1. With regard to criteria relating to economic and financial standing as set out pursuant to Article 56(3), and to criteria relating to technical and professional ability as set out pursuant to Article 56(4), an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It shall in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect. The contracting authority shall verify whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.

Under the same conditions, a group of economic operators as referred to in Article 16 may rely on the capacities of participants in the group or of other entities.

2. Member States may provide that in the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in Article 16, by a participant in that group.

3. Means of proof, notably self-declarations and European Procurement Passport

Article 56a

Means of proof

[Directive 2004/18/EC: Art. 45.3, 47, 48]

1. Contracting authorities may require the certificates, statements and other means of proof referred to in paragraphs 2, 3 and 4 of this Article, Article 59 and Annex XIV as evidence for the absence of grounds for exclusion as referred to in Article 55(4) and for the fulfilment of the selection criteria in accordance with Article 56.

Contracting authorities shall not require means of proof other than those referred to in this Article and in Article 61; furthermore in respect of Article 62, economic operators may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal.

2. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in Article 55 apply to the economic operator:

- (a) as regards paragraph 1 of that Article, the production of an extract from the relevant register, such as judicial records or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country where the economic operator is established showing that those requirements have been met;

- (b) as regards paragraph 2 and point (b) of paragraph 3 of that Article, a certificate issued by the competent authority in the Member State concerned;
- (c) where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1, 2 and point (b) of paragraph 3 of that Article, they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country where the economic operator is established.

A Member State shall, where relevant, provide an official declaration stating that the documents or certificates referred to in this paragraph are not issued or that these do not cover all the cases specified in paragraphs 1, 2 and point (b) of paragraph 3 of Article 55. Such official declarations shall be made available through the online repository of certificates (e-certis) referred to in Article 58.

- 3. Proof of the economic operator's economic and financial standing may, as a general rule, be provided by one or more of the references listed in Annex XIV, part 1.

Where, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

- 4. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XIV, part 2, according to the nature, quantity or importance, and use of the works, supplies or services.
- 5. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence on exclusion grounds, the documents attesting the suitability to pursue the professional activity, and financial and technical capacities of tenderers, as well as any other means of proof referred to in paragraphs 1, 2 and 3 of this Article.

Article 57

Self-declarations and other facilitating measures

1. At the time of submission of requests to participate or of tenders, contracting authorities shall accept self-declarations as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils any of the following conditions:
 - (a) it is not in one of the situations referred to in paragraphs 1 and 2 and in point (b) of paragraph 3 of Article 55 in which economic operators shall or may be excluded;
 - (b) it meets the selection criteria that have been set out pursuant to Article 56;
 - (c) where applicable, it fulfils the objective rules and criteria that have been set out pursuant to Article 64.

The self-declaration shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the selection criterion is fulfilled and provide the pertinent information as required by the contracting authority. It shall further identify the public authority or third party responsible for establishing the supporting document and contain a formal statement to the effect that the economic operator will be able, upon request and without delay to provide that supporting document [...].

2. A contracting authority may ask an economic operator at any moment during the procedure to submit all or parts of the supporting documents where, in the view of the contracting authority, this is necessary to ensure the proper conduct of the procedure.

Before awarding the contract, the contracting authority shall require the tenderer to which it has decided to award the contract to submit the supporting documents in accordance with Articles 59 and 60 and, where appropriate, Article 61, unless the contracting authority can obtain these documents or the relevant information pursuant to paragraph 3. The contracting authority may invite economic operators to supplement or clarify the certificates received pursuant to Articles 59, 60 and 61.

3. Paragraph 2 notwithstanding, economic operators shall not be required to submit supporting documents or other documentary evidence where the contracting authority has the possibility to obtain the certificates or the relevant information directly by accessing a database in any Member State of the European Union, such as a national procurement register, a virtual company dossier, an electronic document storage system or a prequalification system, or by using electronic structures for administrative cooperation.

For the purpose of the first subparagraph, Member States shall ensure that databases which contain relevant information on economic operators and which may be consulted by their contracting authorities may also be consulted, under the same conditions, by contracting authorities of other Member States.

4. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information related to the exclusion grounds listed in Article 55, to the suitability, financial and technical capacities of tenderers described in Article 56 and to the content or nature of the means of proof indicated in this Article.

Recital 32 (modified):

Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through self-declarations, can result in considerable simplification for the benefit of both contracting authorities and economic operators. The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Contracting authorities should also be entitled to request all or part of the supporting documents at any moment where they consider this to be necessary in view of the proper conduct of the procedure. This might in particular be the case in two-stage procedure – restricted procedures.

competitive procedures with negotiation, competitive dialogues and innovation partnerships – in which the contracting authorities make use of the possibility to limit the number of candidates invited to submit a tender. Requiring the certificates could be justified as to avoid that qualified candidates are deprived of the possibility to participate because contracting authorities selected other candidates which eventually cannot submit the required supporting documents. Further simplification can be achieved through standardised documents such as the European Procurement Passport, which should be recognized by all contracting authorities and widely promoted among economic operators, in particular SMEs, for whom they can substantially lessen the administrative burden.

Article 58

Online repository of certificates (e-Certis)[new]

1. With a view to facilitating cross-border tendering, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up to date.
2. Contracting authorities shall have recourse to e-Certis and contracting authorities shall require only such of types of certificates or forms of documentary evidence that are available in e-Certis [...].

[NB: Article 92 listed in cluster 10, but relevant also in this context]

Article 92

Transposition and transitional provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
2. [Text in cluster 4...]

2a Notwithstanding paragraph 1, Member States may postpone the application of Article 58(2) until [2 years later than the date provided for in paragraph 1].

3. When Member States adopt the measures referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 59

~~European Procurement Passport~~

[...]

ANNEX XIII

~~CONTENT OF EUROPEAN PROCUREMENT PASSPORT~~

[...]

Article 61

Quality assurance standards and environmental management standards

[Directive 2004/18/EC: Art. 49, 50]

1. Contracting authorities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, [...] refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member

States. They shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned has no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator.

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁸ or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures where the economic operator concerned has no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator.

Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence of compliance with quality and environmental standards referred to in paragraphs 1 and 2 of this Article.

ANNEX XIV

MEANS OF PROOF OF SELECTION CRITERIA

Part I: Economic and financial standing

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

⁸ OJ L 342, 22.12.2009, p. 1.

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of financial statements or extracts from the financial statements, where publication of financial statements is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

Part II: Technical ability

Means providing evidence of the economic operators' technical abilities, as referred to in Article 56:

- (a) the following lists:

- (i) a list of the works carried out over at the most the past five years, accompanied by certificates of satisfactory execution for the most important works; where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant works carried out more than five years before will be taken into account;
 - (ii) a list of the principal deliveries effected or the main services provided over at the most the past three years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;
- (b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;
 - (c) a description of the technical facilities and measures used by the economic operator for ensuring quality and the undertaking's study and research facilities;
 - (d) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, where necessary, on the means of study and research which are available to it and the quality control measures it will operate;
 - (e) the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff, provided that they are not evaluated as an award criterion;

- (f) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- (g) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;
- (h) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
- (i) an indication of the proportion of the contract which the economic operator intends possibly to subcontract;
- (j) with regard to the products to be supplied:
 - (i) samples, descriptions or photographs, the authenticity of which must be certified where the contracting authority so requests;
 - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

4. Lists of approved economic operators

Article 63

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

[Directive 2004/18/EC: Art. 52]

1. Member States may establish or maintain either official lists of approved contractors, suppliers or service providers or provide for a certification by certification bodies complying with European certification standards within the meaning of Annex VIII.

They shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official lists, to which applications shall be sent.

2. Member States shall adapt the conditions for registration on the lists referred to in paragraph 1 and for the issue of certificates by certification bodies to the provisions of this subsection.

Member States shall also adapt those conditions to Article 62 as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such cases, those operators shall prove to the authority establishing the official list that they will have those resources at their disposal throughout the period of validity of the certificate attesting to their registration in the official list and that throughout the same period those companies continue to fulfil the qualitative selection requirements encompassed by the official list or certificate on which operators rely for their registration.

3. Economic operators registered on the official lists or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body. Those certificates shall state the references which enabled those economic operators to be registered in the list or to obtain certification and the classification given in that list.
4. Certified registration on official lists by the competent bodies or a certificate issued by the certification body shall constitute a presumption of suitability with regard to requirements for qualitative selection encompassed by the list or certificate.
5. Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is to be awarded.

The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the Member State holding the official list.

6. The requirements of proof for the criteria for qualitative selection encompassed by the list or certificate shall comply with Articles 59, 60 and, where appropriate, Article 61. For any registration of economic operators of other Member States in an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.

Economic operators may request at any time their registration in an official list or for the issuance of a certificate. They shall be informed within a reasonably short period of time of the decision of the authority drawing up the list or of the competent certification body.

7. Economic operators from other Member States shall not be obliged to undergo such registration or certification in order to participate in a public contract. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.
8. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the documents produced as evidence that the economic operators fulfil the requirements to be registered in the list of approved economic operators or as evidence that economic operators from another Member State possess an equivalent certification.

5. Reduction of numbers of candidates, tenderers and solutions

Article 64

Reduction of the number of otherwise qualified candidates to be invited to participate

[Directive 2004/18/EC: Art. 44(3)]

1. In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, contracting authorities may limit the number of candidates meeting the selection criteria that they will invite to tender or to conduct a dialogue, provided a sufficient number of qualified candidates is available.

2. The contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

In the restricted procedure the minimum number of candidates shall be five. In the competitive procedure with negotiation, in the competitive dialogue procedure and in the innovation partnership the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number. Where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in Article 56(5) is below the minimum number, the contracting authority may continue the procedure by inviting the candidates with the required capabilities. In the context of the same procedure, the contracting authority shall not include other economic operators that did not request to participate, or candidates that do not have the required capabilities.

Article 65

Reduction of the number of tenders and solutions

[Directive 2004/18/EC: Art. 44(4)]

Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 27(5) or of solutions to be discussed as provided for in Article 28(4), they shall do so by applying the award criteria stated in the procurement documents. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or qualified candidates.

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