

DECISION OF THE ADMINISTRATIVE BOARD OF

20 March 2007

AMENDING EMSA IMPLEMENTING RULES OF THE FINANCIAL REGULATION

THE ADMINISTRATIVE BOARD OF THE EUROPEAN MARITIME SAFETY AGENCY,

Having regard to the European Parliament and Council Regulation 1406/2002, of 27 June 2002, as amended, setting up a European Maritime Safety Agency (hereafter EMSA or the Agency);

Having regard to Regulation 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

Having regard to Commission Regulation 1261/2005 of 20 July 2005 modifying Regulation 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

Having regard to Commission Regulation 1248/2006 of 7 August 2006, amending Regulation 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

Having regard to the Financial Regulations of the European Maritime Safety Agency adopted by the Administrative Board on 3rd July 2003.

Whereas:

- (1) The provisions of the Regulation laying down the detailed rules for the implementation of the Financial Regulation applicable to the budget of the European Maritime Safety Agency (hereinafter referred to as EMSA Implementing Rules) shall be consistent with Regulation 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the Financial

Regulation applicable to the general budget of the European Communities, as amended (hereinafter referred to as Implementing Rules of the Commission).

- (2) Amendments to the Implementing Rules of the Commission have introduced significant changes in regard to procurement provisions.

HAS DECIDED AS FOLLOWS:

Article 1

The Regulation of the European Maritime Safety Agency of 9 December 2003 laying down detailed rules for the implementation of the Financial Regulation adopted on 3 July 2003 applicable to the budget of the European Maritime Safety Agency (hereafter referred to as "the Implementing Rules") is amended as follows:

1. Articles 102 to 105 are replaced by the following

Article 102
Definitions and scope
(Article 88 of the General Financial Regulation)

1. Building contracts cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.
2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract.
3. Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC of the European Parliament and of the Council¹ or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.
4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts. Those services are listed in Annexes IIA and IIB to Directive 2004/18/EC.

¹ OJ L 134, 30.4.2004, p. 114.

5. A contract covering both products and services shall be considered a service contract where the value of the services in question exceeds that of the products included in the contract.

A contract having as its object services and involving works that are only incidental in relation to the principal object of the contract shall be considered a service contract.

A contract having as its object services covered by Annex IIA to Directive 2004/18/EC and services covered by Annex IIB thereto shall be considered as covered by Annex IIA if the value of the services listed in that Annex exceeds that of the services listed in Annex IIB.

- 5a. The description of the various types of contract is based on the reference nomenclature constituted by the common procurement vocabulary (CPV) within the meaning of Regulation (EC) No 2195/2002 of the European Parliament and of the Council².

In the event of differences between the CPV and the statistical classification of economic activities in the European Community (NACE), listed in Annex I to Directive 2004/18/EC, or between the CPV and the Central Product Classification (CPC) (provisional version), listed in Annex II to that Directive, the NACE nomenclature or the CPC nomenclature respectively shall take precedence.

6. The terms «contractor», «supplier» and «service provider» refer to any natural or legal person or public entity or consortium of such persons and/or bodies which offers to execute works, supply products and provide services respectively. The terms «economic operator» covers «contractors», «suppliers» and «service providers». Economic operators who have submitted a tender are referred to as «tenderers». Those who have asked to be allowed to take part in a restricted procedure, including a competitive dialogue, or in a negotiated procedure are referred to as «candidates».

Consortia of economic operators shall be authorised to submit tenders or to be candidates. Contracting authorities may not demand that consortia must have a given legal form in order to be allowed to submit a tender or request to take part, but the consortium selected may be required to adopt a given legal form after it has been awarded the contract if this change is necessary for proper performance of the contract.

7. Departments of the Community institutions shall be considered to be contracting authorities, save where they conclude between themselves administrative arrangements for the provision of services, the supply of products or the execution of works.

Article 103

Framework contracts and specific contracts (Article 88 of the General Financial Regulation)

1. A framework contract is an agreement between one or more contracting authorities and one or more economic operators the purpose of which is to

² OJ L 340, 16.12.2002, p. 1.

establish the terms governing contracts which may be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged. Where a framework contract is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators who satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

A framework contract with a number of economic operators may take the form of separate contracts but concluded in identical terms.

The term of a framework contract may not exceed four years, save in exceptional cases duly justified in particular by the subject of the framework contract.

Contracting authorities may not use framework contracts improperly or in such a way that the purpose or effect is to prevent, restrict or distort competition.

Framework contracts shall be treated as procurement contracts for the purposes of the award procedure, including advertising.

2. Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract, only between the contracting authorities and the economic operators originally party to the framework contract.

When awarding specific contracts, the parties may not make substantial amendments to the terms laid down in that framework contract, in particular in the case referred to in paragraph 3.

3. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded within the limits of the terms laid down in the framework contract.

For the award of those specific contracts, contracting authorities may consult in writing the economic operator party to the framework contract, requesting it to supplement its tender if necessary.

4. Specific contracts based on framework contracts concluded with a number of economic operators shall be awarded in accordance with the following arrangements:

- (a) by application of the terms laid down in the framework contract without reopening competition;

- (b) where not all the terms are laid down in the framework contract, after the parties have again competed on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, on the basis of other terms referred to in the specification for the framework contract.

For every specific contract to be awarded in accordance with the arrangements in point (b) of the first subparagraph, contracting authorities shall consult in writing the economic operators capable of performing the contract, fixing a time limit which is sufficiently long to allow tenders to be submitted. Tenders shall be submitted in writing. Contracting authorities shall award each specific contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specification for the framework contract.

5. Only specific contracts based on framework contracts shall be preceded by a budgetary commitment.

Article 104

Advertising of contracts covered by Directive 2004/18/EC,
with the exception of contracts referred to in Annex IIB thereto
(Article 90 of the General Financial Regulation)

1. Publication for contracts with a value equal to or above the thresholds laid down in Articles 143 and 144 shall consist in a pre-information notice, a contract notice or simplified contract notice and an award notice.
2. The pre-information notice is the notice by which the contracting authorities make known, by way of indication, the estimated total value of contracts and framework contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award during a budgetary year, but excluding contracts under the negotiated procedure without prior publication of a contract notice. The pre-information notice shall be compulsory only where the estimated total value of the contracts is equal to or above the thresholds laid down in Article 143 and the contracting authority intends to make use of the possibility of shortening time limits for receipt of tenders in accordance with Article 126(4).

The pre-information notice shall be published either by the Office for Official Publications of the European Communities (OPOCE) or by the contracting authorities themselves on their buyer profile as referred to in point (2)(b) of Annex VIII to Directive 2004/18/EC.

The pre-information notice shall be sent to OPOCE or published on the buyer profile as soon as possible and in any event by no later than 31 March of each budgetary year in the case of supply and service contracts and, in the case of works contracts, as soon as possible after the decision approving the programme for those contracts. Contracting authorities which publish the pre-information notice on their buyer profile shall send to OPOCE, electronically and using the format and transmission procedures specified in point (3) of Annex VIII to Directive 2004/18/EC, a notice announcing the publication of a pre-information notice on a buyer profile.

3. The contract notice is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 111a. Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 112, The contract notice shall be compulsory for the following contracts:
 - (a) contracts with an estimated value equal to or above the thresholds laid down in points (a) and (c) of Article 144(1);
 - (b) research and development contracts listed in category 8 of Annex II A with an estimated value of equal to or above the threshold laid down in point (b) of Article 144(1) for research and development contracts listed.

It shall not be compulsory for specific contracts based on framework contracts.

Contracting authorities which wish to award a specific contract based on a dynamic purchasing system shall make known their intention by means of a simplified contract notice.

In an open procedure the contract notice shall specify the date, time and, where appropriate, place of the meeting of the opening committee, which shall be open to the tenderers.

Contracting authorities shall state whether or not they authorise variants and shall specify the minimum capacity levels they demand if they make use of the possibility provided for in the second subparagraph of Article 121(2). They shall set out the selection criteria referred to in Article 121 that they intend to use, the minimum number of candidates they plan to invite to tender and, where appropriate, the maximum number, and the objective and non-discriminatory criteria they intend to apply in order to limit the number, in accordance with the second subparagraph of Article 109(1).

Where there is unrestricted, direct and full access to the call for tenders by electronic means, in particular in the dynamic purchasing systems referred to in Article 111a, the Internet address at which these documents can be consulted shall appear in the contract notice.

Contracting authorities wishing to organise a contest shall issue a notice announcing their intention. ...

4. The award notice shall give the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system. In the case of contracts with a value equal to or above the thresholds laid down in Article 144, the award notice shall be compulsory. It shall not be compulsory for specific contracts based on framework contracts.

The award notice shall be sent to the OPOCE no later than 48 calendar days after the procedure is closed, that is to say, from the date on which the contract or framework contract is signed. However, notices relating to contracts based on a dynamic purchasing system may be grouped together on a quarterly basis. In such cases, they shall be sent to the OPOCE no later than 48 days after the end of each quarter.

Contracting authorities which have held a design contest shall send the OPOCE a notice of the results of the contest.

5. The notices shall be drawn up in accordance with the standard forms adopted by the Commission pursuant to Directive 2004/18/EC.

Article 105

Advertising of contracts not covered by Directive 2004/18/EC,
and of the contracts referred to in Annex IIB thereto
(Article 90 of the General Financial Regulation)

1. Contracts with a value below the thresholds laid down in Article 144 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:
 - (a) if no contract notice as referred to in Article 104(3) has been published, notice of a call for expressions of interest for contracts

covering a similar subject with a value equal to or greater than the amount referred to in Article 114(1);

- (b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded, for contracts with a value equal to or greater than EUR 25000.

The publication provided for in point (b) of the first subparagraph shall not be compulsory for specific contracts based on a framework contract.

- 2. A list of contractors to whom building contracts and contracts declared secret in accordance with Article 112(1)(j) are awarded shall be published only once a year, with an indication of the subject and value of the contracts awarded. That list shall be sent to the budgetary authority.

- 3. Information relating to contracts with a value equal to or greater than the amount referred to in Article 114(1) shall be sent to the Office for Official Publications of the European Communities; the annual lists of contractors shall be sent by no later than 31 March following the end of the financial year.

Ex ante advertising and the annual publication of the list of contractors for the other contracts shall be on the Internet site of the institutions; ex post publication shall take place by no later than 31 March of the following financial year. Publication may also be in the Official Journal of the European Communities.'

...

- 2. Article 107 is replaced by the following:

...

'Article 107 ...
Other forms of advertising
(Article 90 of the General Financial Regulation)

In addition to the advertising provided for in Articles 104, 105 and 106, contracts may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the Official Journal of the European Communities, as provided for in Article 106, if one has been published, and may not precede the publication of that notice, which alone is authentic.

...

Such advertising may not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the contract notice, if one has been published.'

- 3. Article 108(2) is replaced by the following:

2. Calls for tenders are open where all interested economic operators may submit a tender. That applies also in the case of the dynamic purchasing systems referred to in Article 111a.

Calls for tenders are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 121 and invited simultaneously and in writing by the contracting authorities may submit a tender or a solution under the competitive dialogue procedure referred to in Article 111b.

The selection phase may be repeated for each individual contract, also in the case of a competitive dialogue, or may involve drawing up a list of potential candidates under the restricted procedure referred to in Article 114.'

4. Articles 109 and 110 are replaced by the following:

Article 109

Number of candidates in restricted or negotiated procedures
(Article 91 of the General Financial Regulation)

1. In a restricted procedure, including the procedure referred to in Article 114, the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The contracting authority may also provide for a maximum number of twenty candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 104 and 105.

In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

2. In negotiated procedures and in restricted procedures after a competitive dialogue, the number of candidates invited to negotiate or to tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

The number of candidates invited to tender must be sufficient to ensure genuine competition.

The first and second subparagraphs shall not apply to the following:

- (a) contracts involving very small amounts, as referred to in Article 115(3);
 - (b) contracts for legal services within the meaning of Annex IIB of Directive 2004/18/EC;
 - (c) contracts declared secret, as referred to in Article 112(1)(j).
3. Where the number of candidates meeting the selection criteria and the minimum levels is below the minimum number specified in paragraphs 1 and 2, the contracting authority may continue the procedure by inviting the candidate or candidates with the required capacities. However, the contracting

authority may not include other economic operators who did not ask to take part, or candidates who do not have the required capacities.

Article 110
Arrangements for negotiated procedures
(Article 91 of the General Financial Regulation)

Contracting authorities shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the contract notice referred to in Article 104 or in the specifications and in any additional documents and in order to find the tender offering best value for money.

During the negotiation, the contracting authorities shall ensure equal treatment for all tenderers.

Where contracting authorities may, in accordance with Article 113, award contracts using a negotiated procedure after publishing a contract notice, they may arrange for the negotiated procedure to be conducted in stages so as to reduce the number of tenders to be negotiated, while applying the award criteria set out in the contract notice or specification. The contract notice or specification shall state that use is to be made of this possibility.'

5. Article 111(3) is replaced by the following:

'3. The proposals of the selection board, based on the merits of each project, and its observations, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the selection board has given its opinion.

Candidates may be asked by the selection board to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.'

6. The following articles 111a and 111b are inserted:

...
'Article 111a
Dynamic purchasing system
(Article 91 of the General Financial Regulation)

1. The dynamic purchasing system, as referred to in Articles 1(6) and 33 of Directive 2004/18/EC, is a completely electronic process for making commonly used purchases, which is open throughout its duration to any economic operator who satisfies the selection criteria and has submitted an indicative tender that complies with the specification and any additional documents. The indicative tenders may be improved at any time provided that they continue to comply with the specification.
2. For the purposes of setting up the dynamic purchasing system, contracting authorities shall publish a contract notice stating that a dynamic purchasing

system is being used and containing a reference to the Internet address offering unrestricted, direct and full access to the specification and to any additional documents from the time of publication of the notice up to the expiry of the system.

They shall indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

3. Contracting authorities shall give any economic operator, throughout the duration of the dynamic purchasing system, the possibility of submitting an indicative tender with a view to being admitted to the system under the conditions referred to in paragraph 1. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform tenderers at the earliest possible opportunity that they have been admitted to the dynamic purchasing system or that their tender has been rejected.

4. Each specific contract shall be the subject of an invitation to tender. Before issuing this invitation, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, within a time limit that may not be less than 15 days from the date on which the simplified notice is sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

Contracting authorities shall invite all tenderers admitted to the system to submit a tender within a reasonable time. They shall award the contract to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

5. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

Article 111b
Competitive dialogue
(Article 91 of the General Financial Regulation)

1. In the case of particularly complex contracts, where the contracting authority considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue referred to in Article 29 of Directive 2004/18/EC.

A contract is considered to be «particularly complex» where the contracting authority is not objectively able to define the technical means capable of

satisfying the needs or objectives or able to specify the legal or financial make-up of the project.

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.
3. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria set out in Article 121 in order to identify and define the means best suited to satisfying their needs.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers and confidentiality of the solutions proposed or other information communicated by a candidate participating in the dialogue unless he/she agrees to its disclosure.

Contracting authorities may provide for the procedure to 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 in the contract notice or the descriptive document if provision is made for this possibility in the contract notice or the descriptive document.

4. After informing the participants that the dialogue is concluded, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

At the request of the contracting authority, these tenders may be clarified, specified and fine-tuned provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect.

At the request of the contracting authority, the tenderer identified as having submitted the tender offering best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

5. The contracting authorities may specify prices or payments to the participants in the dialogue.

7. Articles 112 to 116 are replaced by the following:

Article 112
Use of a negotiated procedure
without prior publication of a contract notice
(Article 91 of the General Financial Regulation)

1. Contracting authorities may use the negotiated procedure without prior publication of a contract notice, whatever the estimated value of the contract, in the following cases:

- (a) where no tenders, or no suitable tenders, or no applications have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the call for tenders referred to in Article 116 are not substantially altered;
- (b) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;
- (c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities, it is impossible to comply with the time limits set for the other procedures and laid down in Articles 126, 127 and 128;
- (d) where a service contract follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates shall be invited to participate in the negotiations;
- (e) for additional services and works not included in the project initially envisaged or in the initial contract but which, through unforeseen circumstances, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;
- (f) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator awarded the initial contract by the same contracting authority, provided that these services or works conform to a basic project and that this project was the subject of an initial contract awarded under the open or restricted procedure, subject to the conditions set out in paragraph 3;
- (g) for supply contracts:
 - (i) in the case of additional deliveries 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 equipment having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts may not exceed three years;
 - (ii) where the products are manufactured purely for the purpose of research, experiment, study or development, with the exception of commercial viability tests and large-scale production aimed at recovering research and development costs;
 - (iii) in respect of supplies quoted and purchased on a commodity market;
 - (iv) in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
- (h) for building contracts, after prospecting the local market;

- (i) for contracts for legal services within the meaning of Annex IIB to Directive 2004/18/EC, provided that such contracts are appropriately advertised;
- (j) for contracts declared to be secret by the institution or by the authorities delegated by the institution, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Communities or of the Union so requires.

Contracting authorities may also use the negotiated procedure without prior publication of a contract notice in the case of contracts with a value less than or equal to EUR 60000.

2. For the additional services and works referred to in point (e) of paragraph 1, the contracting authority may make use of the negotiated procedure without prior publication of a contract notice on condition that the award is made to the contractor performing the contract:
 - (a) where such additional contracts cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority; or
 - (b) where such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

The aggregate value of additional contracts may not exceed 50 % of the amount of the initial contract.

3. In the cases referred to in point (f) of the first subparagraph of paragraph 1, the option of using the negotiated procedure shall be pointed out as soon as the first operation is put out to competitive tender, and the total estimated amount for the subsequent services or work shall be taken into consideration in calculating the thresholds referred to in Article 144. That procedure may be used only during the three years following conclusion of the original contract.

Article 113

Use of a negotiated procedure after prior publication of a contract notice (Article 91 of the General Financial Regulation)

1. Contracting authorities may use the negotiated procedure after having published a contract notice, whatever the estimated value of the contract, in the following cases:
 - (a) where tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, are submitted in response to an open or restricted procedure, or a competitive dialogue, which has been completed, provided that the original terms of the contract as specified in the call for tenders referred to in Article 116 are not substantially altered, without prejudice to the application of paragraph 2;
 - (b) in exceptional cases involving work, supplies or services where the nature or the risks do not permit prior overall pricing by the tenderer;
 - (c) where the nature of the service to be procured, in particular in the case of financial services and intellectual services, is such that contract

specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender in accordance with the rules governing open or restricted procedures;

- (d) for works contracts, where the works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
 - (e) for the service contracts referred to in Annex IIB to Directive 2004/18/EC, subject to points (i) and (j) of the first subparagraph of Article 112(1) of this Regulation and the second subparagraph thereof.
 - (f) for research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;
 - (g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.
2. In the cases referred to in point (a) of paragraph 1, contracting authorities may refrain from publishing a contract notice if they include in the negotiated procedure all the tenderers and only the tenderers satisfying the selection criteria who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Article 114

Restricted procedure involving a call for expressions of interest
(Article 91 of the Financial Regulation)

- 1. A call for expressions of interest shall constitute a means of pre-selecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts with a value of more than EUR 60000, subject to Articles 112 and 113.
- 2. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date on which the notice referred to in point (a) of Article 105(1) is sent to the Office for Official Publications of the European Communities.

Any interested person may submit an application at any time during the period of validity of the list, with the exception of the last three months of that period.
- 3. Where a specific contract is to be awarded, the contracting authority shall invite either all candidates entered on the list or only some of them, on the basis of objective and non-discriminatory selection criteria specific to that contract, to submit a tender.

Article 115

Low-value contracts
(Article 91 of the General Financial Regulation)

- 1. A negotiated procedure with consultation of at least five candidates may be used for contracts with a value less than or equal to EUR 60 000.

If, following consultation of the candidates, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

2. For contracts with a value less than or equal to EUR 25 000, the procedure referred to in paragraph 1 with consultation of at least three candidates may be used.
3. Contracts with a value less than or equal to EUR 3 500 may be awarded on the basis of a single tender.
4. Payments in respect of items of expenditure for an amount less than or equal to EUR 200 may consist simply in payment against invoices, without prior acceptance of a tender.

Article 116

Documents relating to the invitation to tender (Article 92 of the General Financial Regulation)

1. The documents relating to the invitation to tender shall include at least:
 - (a) the invitation to tender or to negotiate or to take part in the dialogue under the procedure referred to in Article 111b;
 - (b) the attached specification or, in the case of a competitive dialogue as referred to in Article 111b, a document describing the needs and requirements of the contracting authority, or the reference for the Internet address at which such specification or document can be consulted;
 - (c) the model contract.

The documents relating to the invitation to tender shall contain a reference to the advertising measures taken under Articles 104 to 107.

2. The invitation to tender or to negotiate or to take part in the dialogue shall at least:
 - (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 121 if they are not specified in the contract notice, and the address to which they must be sent;
 - (b) state that submission of a tender implies acceptance of the specification referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
 - (c) specify the period during which a tender will remain valid and may not be varied in any respect;
 - (d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid

down in Article 134, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;

- (e) specify, in the case of a competitive dialogue, the date set and the address for the start of the consultation phase.

3. The specifications shall at least:

- (a) specify the exclusion and selection criteria applying to the contract, save in the restricted procedure, including after a competitive dialogue, and in the negotiated procedures following publication of a notice, referred to in Article 113; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;
- (b) specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance, if this is not specified in the contract notice;
- (c) set out the technical specifications referred to in Article 117;
- (d) state the minimum requirements which variants must meet in the procedures referred to in Article 124(2) under which the contract is awarded to the tender offering best value for money, where the contracting authority has stated in the contract notice that such variants are permitted;
- (e) state that the Protocol on Privileges and Immunities or, where appropriate, the Vienna Convention on Diplomatic Relations or Consular Relations applies;
- (f) specify the evidence of access to contracts, as set out in Article 145;
- (g) specify, in the dynamic purchasing systems referred to in Article 111a, the nature of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

4. The model contract shall in particular:

- (a) specify the penalties for failure to comply with its clauses;
- (b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with Article 83;
- (c) specify the law applicable to the contract and the competent court for hearing disputes.

5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors.'

8. In Article 117 the following paragraphs 5a and 5b are added:

'5a. Where contracting authorities lay down environmental characteristics in terms of performance or of functional requirements, they may use the detailed specifications, or, if necessary, parts thereof, as defined by European, multinational or national eco-labels, or by any other eco-label, provided that the following conditions are satisfied:

- (a) the specifications used are appropriate to define the characteristics of the supplies or services that are the object of the contract;
- (b) the requirements for the label are drawn up on the basis of scientific information;
- (c) the eco-labels are adopted using a procedure in which all the parties concerned, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate;
- (d) the eco-labels are accessible to all interested parties.

Contracting authorities may indicate that the products or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents. They shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

5b. A recognised body for the purposes of paragraphs 4, 5 and 5a is a test and calibration laboratory or a certification and inspection body which complies with applicable European standards.'

9. Articles 120 and 121 shall be replaced by the following:

'Article 120

Evidence

(Articles 93 and 94 of the General Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 93 and 94 of the General Financial Regulation.

However, in case of restricted procedure, competitive dialogue and negotiated procedure after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3, confirming the declaration referred to in paragraph 1 in the following case:

- for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 144;

For contracts with a value less than the threshold referred above, the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the General Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the General Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in paragraph 1 is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the General Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.
5. Where they have doubts as to whether candidates or tenderers are in one of the situation of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.
6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

Article 121
Selection criteria
(Article 97(1) of the General Financial Regulation)

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.
2. The selection criteria shall be applied in every procurement procedure for the purposes of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.
4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required in accordance with paragraph 2 may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.
6. The contracting authority may, depending on his assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contract:
 - contracts awarded by the institutions on their own account, with a value of less than or equal to EUR 60 000,

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.'

10. The Article 122(3) shall be replaced by the following:

3. 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 must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 104(6) may rely on the capacities of members of the consortium or of other entities.'

11. Article 123 shall be replaced by the following:

Article 123
Technical and professional capacity
(Article 97(1) of the General Financial Regulation)

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring sitting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.

2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:
- (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
 - (b) a list:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;
 - (ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
 - (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
 - (d) a description of the technical equipment and the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
 - (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
 - (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
 - (g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
 - (h) an indication of the proportion of the contract which the service provider may intend to subcontract;
 - (i) for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Where the services or supplies referred to in point (b)(i) of the first subparagraph are provided to contracting authorities, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's

agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

- 3a. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.
- 3b. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council³ or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.
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 must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 104(6) may rely on the capacities of members of the consortium or of other entities.'

12. Article 124(3) is replaced by the following:

3. The contracting authority shall specify, in the contract notice or in the specification or in the descriptive document, the weighting it will apply to each of the criteria for determining best value for money. That weighting may be expressed as a range with an appropriate maximum spread.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor, without prejudice to the scales laid down by the institution for the remuneration of certain services, such as those provided by experts for evaluation purposes.

If, in exceptional cases, weighting is technically impossible, particularly on account of the subject of the contract, the contracting authority shall merely specify the decreasing order of importance in which the criteria are to be applied.'

³ OJ L 114, 24.4.2001, p. 1.

13. After Article 124 the following Articles 124a is added:

Article 124a
Use of electronic auctions
(Article 97(2) of the General Financial Regulation)

1. In open, restricted or negotiated procedures in the case referred to in Article 113 (1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction, as referred to in Article 54 of Directive 2004/18/EC, when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in Article 103(4)(b) of this Regulation and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 111a.

The electronic auction shall be based either solely on prices, in which case the contract is awarded to the lowest price, or on the prices and/or the values of the features of the tenders indicated in the specification, in which case the contract is awarded to the tender offering best value for money.

2. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specification shall include the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that those 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.
3. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take

place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

4. When the contract is to be awarded on the basis of the tender offering best value for money, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 124(3).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine 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 fixed to determine the tender offering best value for money, as indicated in the contract notice or in the specification; 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.

5. 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. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specification. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.
6. Contracting authorities shall close an electronic auction in one or more of the following ways:
 - (a) in the invitation to take part in the auction, they shall indicate the date and time fixed in advance;
 - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
 - (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When 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.

7. After closing an electronic auction, contracting authorities shall award the contract in accordance with Article 124 on the basis of the results of the electronic auction.

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.'

14. Articles 126 to 129 are replaced by the following:

Article 126

Time limits for receipt of tenders and requests to participate
(Article 98(1) of the General Financial Regulation)

1. The time limits for the receipt of tenders and requests to participate, laid down in calendar days by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.
2. In open procedures for contracts with a value equal to or above the thresholds set in Article 144, the time limit for receipt of tenders shall be no less than 52 days from the date on which the contract notice is dispatched.
3. In restricted procedures, including cases of use of the competitive dialogue referred to in Article 111b, and in negotiated procedures with publication of a contract notice for contracts with a value equal to or above the thresholds set in Article 144, the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched. ...

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 144, the time limit for receipt of tenders shall be no less than 40 days from the date on which the invitation to tender is dispatched.

However, in the restricted procedures after a call for expressions of interest referred to in Article 114, the time limit for receipt of tenders shall be no less than 21 days from the date on which the invitation to tender is dispatched. ...

4. Where the contracting authorities, in accordance with Article 104(2), have sent a pre-information notice for publication or have themselves published a pre-information notice on their buyer profile, the time limit for the receipt of tenders may generally be reduced to 36 days but shall in no circumstances be less than 22 days from the date of dispatch of the contract notice or the invitation to tender.

The shortened time limits referred to in the first subparagraph shall be permitted only if the pre-information notice satisfies the following conditions:

- (a) it contains all the information required for the contract notice, insofar as that information is available at the time the notice is published;
 - (b) it was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.
5. The time limits for receipt of tenders may be shortened by five days if unrestricted and direct access is available by electronic means to all documents constituting the call for tenders from the date of publication of the contract notice or the call for expressions of interest.

Article 127
Time allowed for access to invitation to tender documents
(Article 98(1) of the General Financial Regulation)

1. Provided that the request was made in good time before the deadline for submission of tenders, the specification or descriptive documents in the procedure referred to in Article 111b and additional documents shall be sent, within six calendar days of the receipt of the request, to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender, subject to the provisions of paragraph 4. Contracting authorities are not bound to reply to requests for documents made less than five working days before the deadline for submission of tenders.
2. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the specification or the descriptive documents or additional documents shall be supplied simultaneously to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. Contracting authorities are not bound to reply to requests for additional information made less than five working days before the deadline for submission of tenders.
3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time-limits set in paragraphs 1 and 2, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time-limits for receipt of tenders referred to in Article 126 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 104 to 107.
4. In the open procedure, including the dynamic purchasing systems referred to in Article 125a, if there is unrestricted and full direct access by electronic means to the entire call for tenders and any additional documents, paragraph 1 shall not apply. The contract notice referred to in Article 104(3) shall give the Internet address at which those documents can be consulted.

Article 128
Time limits in urgent cases
(Article 98(1) of the General Financial Regulation)

1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in Article 126(3) for restricted procedures and negotiated procedures where a contract notice is published, contracting authorities may set the following time limits, expressed in calendar days:
 - (a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice is dispatched or 10 days if the notice is sent to OPOCE electronically;
 - (b) a time limit for the receipt of tenders which may not be less than 10 days from the date of dispatch of the invitation to tender.

2. In restricted procedures and fast-track negotiated procedures, additional information on the specifications shall, provided it has been requested in good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

Article 129
Methods of communication
(Article 98(1) of the General Financial Regulation)

1. The arrangements for the submission of tenders and requests to participate shall be determined by the contracting authority, which may choose an exclusive method of submission. Tenders and requests to participate may be submitted by letter or by electronic means. Requests to participate may also be submitted by fax.

The means of communication chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of economic operators to the award procedure.

The means of communication chosen shall be such as to ensure that the following conditions are satisfied:

- (a) each submission contains all the information required for its evaluation;
- (b) the integrity of data is preserved;
- (c) the confidentiality of tenders is preserved and the contracting authorities examine the content of tenders only after the time limit set for submitting them has expired.

Where necessary for the purposes of legal proof, the appointing authorities may decide that requests to participate submitted by fax must be confirmed by letter or electronically as soon as possible and at all events before the final date set in Articles 136.

Contracting authorities may require that electronic tenders be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council⁴.

- 1a. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use. The information relating to the specifications required for presentation of tenders and requests to participate, including encryption, shall be made available to the tenderers or candidates.

Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex X to Directive 2004/18/EC.

2. Where submission is by letter, tenderers may choose to submit tenders:

⁴ OJ L 13, 19.1.2000, p. 12.

- (a) either by post or by courier service, in which case the call for tenders shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
 - (b) by hand-delivery to the premises of the institution by the tenderer in person or by an agent; for which purposes the call for tenders shall specify, in addition to the information referred to in Article 116(2)(a), the department to which tenders are to be delivered against a signed and dated receipt.
3. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:

Tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope must bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words Invitation to tender — Not to be opened by the mail service. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape.'

15. Articles 131 to 135 are replaced by the following:

'Article 131

Opening of tenders and requests to participate
(Article 98(3) of the General Financial Regulation)

- 1. All requests to participate and tenders that satisfy the requirements of Article 129 shall be opened.
- 2. Where the value of a contract exceeds the threshold laid down in Article 115(1), the authorising officer responsible shall appoint a committee to open the tenders.

The opening committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the General Financial Regulation. In the representations or local units referred to in Article 254 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

- 3. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents proving the date and time of dispatch of each tender.

They shall also initial:

- (a) either each page of each tender; or
- (b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique employed by a department that is independent of

the authorising department, save in the cases referred to in the third subparagraph of paragraph 2.

Where the contract is awarded under the automatic award procedure in accordance with point (a) of Article 124(1), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 129.

Article 132

Committee for the evaluation of tenders and requests to participate (Article 98(4) of the General Financial Regulation)

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee set up for each of the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 115(1).

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the General Financial Regulation.

The evaluation committee may be composed of the same members as the committee opening the tenders.

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 52 of the General Financial Regulation.

3. Requests to participate and tenders which do not satisfy all the essential requirements set out in the supporting documentation for invitations to tender or the specific requirements laid down therein shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies.

Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

4. In the case of abnormally low tenders as referred to in Article 125 of this Regulation, the evaluation committee shall request any relevant information concerning the composition of the tender.

Article 133
Results of the evaluation
(Article 99 of the General Financial Regulation)

1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated. It shall be signed by all the members of the evaluation committee. It shall be kept for future reference.
2. The written record referred to in paragraph 1 shall contain at least the following:
 - (a) the name and address of the contracting authority, and the subject and value of the contract, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.
3. The contracting authority shall then take its decision giving at least the following:
 - (a) the name and address of the contracting authority, and the subject and value of the contract, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
 - (f) in the case of negotiated procedures and competitive dialogue, the circumstances referred to in Articles 111b, 112, 113, which justify their use;
 - (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

Article 134
Contacts between contracting authorities and tenderers
(Article 99 of the General Financial Regulation)

1. Contact between the contracting authority and tenderers during the contract award procedure may take place, by way of exception, under the conditions set out in paragraphs 2 and 3.
2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 127, the contracting authority may:
 - (a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the specifications;
 - (b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications, inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the contracting authority may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.
4. In every case where contact has been made, a «note for the file» shall be drawn up.
5. In the case of contracts for legal services within the meaning of Annex IIB to Directive 2004/18/EC, the contracting authority may enter into the necessary contacts with tenderers to check the selection and/or award criteria.

Article 135
Information for candidates and tenderers
(Articles 100(2) and 101 of the General Financial Regulation)

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than fifteen calendar days from the date on which a written request is received, communicate the information provided for in Article 100(2) of the General Financial Regulation.
3. In the case of contracts awarded by the Community institutions on their own account, under Article 105 of the General Financial Regulation, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, as soon as possible after the award decision and within the following week at the latest, by mail and fax or email, that their application or tender has not been accepted; specifying in each case the reasons why the tender or application has not been accepted.

The contracting authority shall, at the same time as the unsuccessful candidates or tenderers are informed that their tenders or applications have not been accepted, inform the successful tenderer of the award decision, specifying that the decision notified does not constitute a commitment on the part of the contracting authority.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all tenderers who have put in an admissible tender may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 100(2) of the General Financial Regulation. The contracting authority shall reply within no more than fifteen calendar days from receipt of the request.

The contracting authority may not sign the contract or framework contract with the successful tenderer until two calendar weeks have elapsed from the day after the simultaneous dispatch of the rejection and award decisions. If necessary it may suspend signing of the contract for additional examination if justified by the requests or comments made by unsuccessful tenderers or candidates during the two calendar weeks following the rejection or award decisions or any other relevant information received during that period. In that event all the candidates or tenderers shall be informed within three working days following the suspension decision.'

16. Article 138 is replaced by the following: ...

'Article 138
Guarantee for pre-financing
(Article 102 of the General Financial Regulation)

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150000 or in the case referred to in Article 121(6) second subparagraph.

However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.'

17. Articles 140 to 144 are replaced by the following:

'Article 140
Identification of the appropriate level for the calculation of thresholds
(Articles 104 and 105 of the General Financial Regulation)

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 105 of the General Financial Regulation have been reached.

Article 141
Separate contracts and contracts with lots
(Article 91 and 105 of the General Financial Regulation)

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for that purpose.

2. Where the subject of a supply, service or works contract is subdivided into several lots, each one the subject of an individual contract, the value of each lot shall be taken into account for the overall evaluation of the applicable threshold.

Where the overall value of lots is equal to or exceeds the thresholds laid down in Article 144, Article 90(1) and Article 91(1) and (2) of the General Financial Regulation shall apply to each of the lots, save those with an estimated value of less than EUR 80000 in the case of service or supply contracts, or less than one million euro in the case of works contracts, provided that the aggregate amount of those lots does not exceed 20 % of the aggregate value of all the lots making up the contract in question.

3. Where the planned purchase of standard supplies may give rise to simultaneous contracts in separate lots, the estimated value of all those lots shall be taken as the basis for determining the applicable threshold.

Article 142
Arrangements for estimating the value of certain contracts
(Article 105 of the General Financial Regulation)

1. For the purposes of calculating the estimated amount of a contract, the contracting authority shall include the contractor's total estimated remuneration.

Where a contract provides for options or possible renewal, the basis for calculation shall be the maximum amount authorised, including the use of option clauses and renewal.

This estimate shall be made when the contract notice is sent or, where there is no such publicity, when the contracting authority initiates the award procedure.

- 1a. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total lifetime of the framework contract or dynamic purchasing system.
2. For service contracts, account shall be taken of:
 - (a) in the case of insurance services, the premium payable and other forms of remuneration;
 - (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
 - (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.
3. In the case of service contracts which do not specify a total price or of supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:
 - (a) in the case of fixed-term contracts:
 - (i) where their term is forty-eight months or less in the case of services or twelve months or less in the case of supplies, the total contract value for their duration;
 - (ii) where their term is more than twelve months in the case of supplies, the total value including the estimated residual value;
 - (b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding forty-eight months, the monthly value multiplied by forty-eight.
4. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the contract value shall be established on the basis of:
 - (a) either the actual aggregate cost of similar contracts for the same categories of services or products awarded over the previous financial year or twelve months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract;
 - (b) or the estimated aggregate cost of successive contracts during the twelve months following the first service performed or first delivery or during the term of the contract, where this is greater than twelve months.
5. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry

out the works and made available to the contractor by the contracting authority.

Article 143
Thresholds for pre-information notices
(Article 105 of the General Financial Regulation)

The thresholds referred to in Article 104 for publication of a pre-information notice shall be:

- (a) EUR 750000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC;
- (b) EUR 5 278 000 for works contracts.

Article 144
Thresholds for application of the procedures under Directive 2004/18/EC
... (Article 105 of the General Financial Regulation)

1. The thresholds referred to in Article 105 of the General Financial Regulation shall be:
 - (a) EUR 137,000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC, with the exception of the research and development contracts listed in category 8 of that Annex;
 - (b) EUR 211,000 for the service contracts listed in Annex IIB to Directive 2004/18/EC and for the research and development service contracts listed in category 8 of Annex IIA to Directive 2004/18/EC;
 - (c) EUR 5 278,000 for works contracts.

2. The time limits referred to in Article 105 of the General Financial Regulation shall be those specified in Articles 136, 137 and 138.'

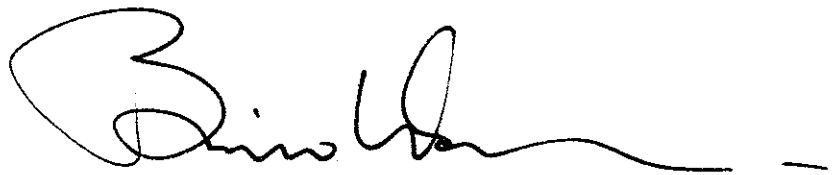
Article 2

Public procurement procedures launched before the entry into force of this Decision shall continue to be subject to the rules applicable at the time when those procedures were launched.

Article 3

This Decision shall enter into force on the day of adoption by the Administrative Board.

Done at Lisbon on 20 March 2007,

A handwritten signature in black ink, appearing to read 'Brian Wadsworth', with a long horizontal flourish extending to the right.

Brian Wadsworth

Chairman of the Administrative Board